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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 103

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS, PETITIONER

vs.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 27, 1942
CERTIORARI GRANTED OCTOBER 12, 1942

In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 7661

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED,

Plaintiffs-Appellees,

vs.

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS,

Defendant-Appellant.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Charles E. Woodward, District Judge of the United States for the Northern District of Illinois on Nineteenth day of December, in the year of our Lord one thousand nine hundred and Forty, being one of the days of the regular December Term of said Court, begun Monday, the Sixteenth day of December, and of our Independence the 165th year. Placita.

Present:

Honorable Charles E. Woodward, District Judge,
William H. McDonnell, U. S. Marshal,
Hoyt King, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES

Northern District of Illinois,

Eastern Division.

The Northern Trust Company and Mary E. Kaufman, Executors under the Last Will and Testament of Henry M. Wolf, Deceased, *vs.* Carter H. Harrison, Individually and as Collector of Internal Revenue, First Collection District of Illinois.	No. 47259.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Complaint at Law in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the Sixth day of July, A. D. 1938.

Filed July 6, 1938. 4 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47259) * *

COMPLAINT AT LAW.

The Northern Trust Company and Mary E. Kaufman, as Executors under the Last Will and Testament of Henry M. Wolf, deceased, bring this action, arising under the internal revenue laws of the United States, against Carter H. Harrison, individually and as Collector of Internal Revenue, First Collection District of Illinois, to recover the sum of $119,069.43, with interest thereon as hereinafter stated, upon a cause of action whereof the following is a statement:

1. The plaintiffs are citizens of the United States residing in the City of Chicago, County of Cook, Illinois, in the Northern District of Illinois, Eastern Division, and are the duly appointed, qualified and acting executors under

the last will and testament of Henry M. Wolf, deceased, late a citizen and resident of Chicago, Illinois.

5 2. The defendant, Carter H. Harrison, is, and at the times of payment of the estate tax and interest thereon hereinafter mentioned was, a resident and inhabitant of the City of Chicago, County of Cook, Illinois, in the Northern District of Illinois, Eastern Division, and is, and at said times was, the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the First Collection District of Illinois, which District includes the aforesaid City and County.

3. Henry M. Wolf, plaintiffs' testator, died on June 4, 1935, leaving a last will and testament and codicil thereto which were duly proved and admitted to probate in the Probate Court of Cook County, Illinois, in which court the said decedent's estate has been and is being administered. A copy of said last will and testament and codicil thereto is hereto attached and marked Exhibit A and hereby by reference made part hereof, the same to all intents and purposes as if said will and codicil had been set forth in this Complaint. Plaintiffs duly filed an estate tax return for the estate of their said decedent with the defendant, the United States Collector of Internal Revenue at Chicago, Illinois. In the said return they reported a gross estate of $4,238,805.97; total funeral expenses, administration expenses, debts and claims, and executors' and attorneys' fees aggregating $290,060.44; total specific bequests and legacies other than charitable of $1,816,679.81; deductions for charitable bequests in the aggregate amount of $1,656,650.73; a net estate for tax imposed by the United States Revenue Act of 1926 of $2,192,094.80, and a net estate for additional tax imposed by the United States Revenue Act of 1932 of $2,242,094.80. The tax of $436,744.65 shown to be due by the said return was paid by the executors to the Collector of Internal Revenue at Chicago, Illinois, under protest, on May 28, 1936.

4. Under said will of the decedent there were

6 specific bequests to charitable organizations within the meaning of Section 303 (a) (3) of the United States Revenue Act of 1926, as amended, as follows: Article Seventh $5,000.00; Article Eleventh $248,178.33; Article Twelfth $157,611.28; Article Thirteenth $53,248.98; Article Fourteenth $106,658.15; and Article Fifteenth $1,000,000. Under the decedent's said will all the rest, residue and remainder of his estate, after specific bequests and legacies

and other items not here material in the aggregate amount of $1,921,195.71, was bequeathed and devised to charitable organizations within the meaning of Section 303 (a) (3) of the United States Revenue Act of 1926, as amended.

5. Except a direction in Article Fourth of his said will, that all inheritance, legacy, succession and estate taxes, both State and Federal, on all the specific gifts and bequests contained in Articles Third and Fourth of his said will should be paid by his executors out of his general estate, the decedent's said will contained no provision regarding the payment of Federal Estate Tax or Illinois Inheritance Taxes, and hence no provision was contained in the decedent's said will for the payment in whole or in part out of the aforesaid residuary bequests or devises of any part of any estate, succession, legacy or inheritance tax, nor was any such tax payable out of said residuary estate by the law of the jurisdiction of Illinois under which the estate was administered, or by the law of the jurisdiction under which the taxes were imposed. By the law of Illinois, the Federal Estate Tax is and was payable, not out of the residuary bequests and devises to charitable organizations, but out of the general or gross estate of the decedent as an expense of administration.

6. In due course the aforesaid estate tax return was transmitted by the defendant to the Commissioner of Internal Revenue of the United States, who examined and audited the same. The said Commissioner thereupon
7 determined a gross estate for plaintiffs' decedent of $4,238,805.97; deductions for funeral expenses, attorneys' fees, executors' commissions, miscellaneous administration expenses and debts of the decedent in the aggregate amount of $283,810.44; specific bequests and legacies to other than charitable organizations and unallowable deductions in the aggregate amount of $1,921,195.71; specific bequests, legacies and devises to charitable organizations within the meaning of Section 303 (a) (3) of the United States Revenue Act of 1926, as amended, in the aggregate amount of $1,570,696.74; leaving a net residuary estate, before any reduction on account of Federal estate tax, of $463,103.08.

7. In determining the amount of the said residuary estate allowable as a deduction on account of the decedent's bequests and devises of his residuary estate to charitable organizations, the Commissioner calculated, by algebraic formula, that the total amount of the Federal estate tax,

on the basis of allowing as a deduction for residuary bequests to charitable organizations only the amount of $3,223.51, would be $459,879.57, reduced the aforesaid residuary estate by said sum of $459,879.57 and allowed the remainder of $3,223.51 as a deduction for said charitable bequests and devises under the residuary clause of said will.

8. Pursuant to and in accordance with his aforesaid determination, the Commissioner of Internal Revenue determined and assessed against the plaintiffs, as executors of their decedent, an additional estate tax in the amount of $23,134.92, with interest thereon of $1,934.46, or a total of $25,069.38, which amount the plaintiffs paid, under protest, to the defendant, as Collector of Internal Revenue, on November 13, 1937.

9. On March 7, 1938 the plaintiffs in accordance with the law duly filed with the defendant, Collector of Internal Revenue for the First Collection District of Illinois,
8 at Chicago, Illinois, for transmission to the Commissioner of Internal Revenue, their claim for refund of $119,069.43 of estate tax and interest thereon, or of such other amount as may be legally refundable, a copy of which said claim is hereto attached marked Exhibit B and hereby by reference made part hereof, the same to all intents and purposes as if said claim had been set forth in the Complaint.

10. On or about May 10, 1938, the Commissioner of Internal Revenue, having in due course received and considered plaintiffs' aforesaid claim for refund, wholly disallowed and rejected the same and notified the plaintiffs thereof by registered mail.

11. By reason of the erroneous determination and allowance of only the amount of $3,223.51 as a deduction for charitable bequests and devises under the residuary clause of the will of plaintiffs' decedent, as aforesaid, and the erroneous failure to determine and allow as a deduction therefor the amount of $463,103.08 in determining the estate tax liability of the estate of plaintiffs' decedent, and for the reasons and upon the grounds set forth in the plaintiffs' aforesaid Claim for Refund, Exhibit B hereof, the Commissioner of Internal Revenue erroneously determined and assessed against the plaintiffs the amount of $117,134.97 in excess of the amount lawfully due and owing by them as estate tax, which said amount, together with interest thereon in the amount of $1,934.46, the defendant, individually and as Collector of Internal Revenue, unlawfully and

illegally demanded and collected, under protest, from the plaintiffs.

12. The plaintiffs are informed and believe and therefore aver that the Commissioner of Internal Revenue claimed and claims authority to compute, determine and allow deduction for residuary bequests and devises for charitable purposes in the manner above set forth by reason of the provisions of Section 807 of the United States Revenue Act of 1932 amending said Section 303 (a) (3) of the United States Revenue Act of 1926. The said Sec-
9 tion is (1) unconstitutional and void if and as applied by the Commissioner in determining the estate tax liability of the decedent's estate, but (2), if constitutional, is inapplicable in computing and determining the estate tax liability of the decedent's estate, and (3), if constitutional and applicable in the determination of the estate tax liability in the case of this estate, it is required to be applied without the use of an algebraic formula. If Section 807 of the United States Revenue Act of 1932 is applicable in this case and requires computation in the manner made by the Commissioner of Internal Revenue, it is unconstitutional, because the requirement (a) that the incidence of the tax must be regarded in the levying of the tax and (b) that the amount of the tax shall be measured by the tax itself is so discriminatory and unreasonable, capricious and arbitrary as to deny to the plaintiffs the due process guaranteed by the Fifth Amendment to the Constitution of the United States.

13. There is now justly due and owing by the defendant to the plaintiffs the sum of $119,069.43, with interest on $25,069.38 from November 13, 1937, and on $94,000.05 from May 28, 1936, as provided by law, with costs, which sums the defendant is wrongfully and unlawfully withholding from the plaintiffs, though payment thereof has been duly demanded.

Wherefore, the plaintiffs claim from the defendant the sum of $119,069.43, with interest thereon as aforesaid, or such other amount as may be legally refundable, and costs, for which plaintiffs pray judgment against defendant.

Judah, Reichmann, Trumbull, Cox and Stern,
Attorneys for Plaintiffs,
The Northern Trust Company and Mary E. Kaufman, Executors Under the Last Will and Testament of Henry M. Wolf, Deceased.

10 Will and Codicil
of
Henry M. Wolf

11 In the Name of God, Amen:

I, Henry M. Wolf, of Chicago, Illinois, being of sound and disposing mind and memory, do make this my Last Will and Testament, and I hereby revoke all former wills and codicils by me at any time heretofore made.

Article First

I direct that my Executors make adequate and proper provisions for the perpetual care and planting of the family lot (including all stones thereon) in Rosehill Cemetery, Chicago, and I desire that my remains or ashes be buried by the side of the graves of my Parents.

Article Second

I give and bequeath to my nieces, Agnes Wolf Stern and Bertha Wolf Raymondaud, or to the survivors of them, all my articles and effects of personal and/or household use and ornament of every nature and description, wherever the same shall be at my death, whether in or about the apartments that I now have or in the apartment that I may then reside in, use or have, or elsewhere, excepting only as provided in Article Fifth hereof, and I hope that my nieces Agnes and Bertha will keep some of the foregoing articles and effects and distribute the others as keepsakes to such of my relatives and friends as they may in their uncontrolled discretion deem best, but I do not impose any obligation upon them to do so.

(Appearing in left-hand margin: Henry M. Wolf.)

Article Third

To everyone (without exception) who on the date of this will is and continuously thereafter until my death shall be in the employ of the firm of Judah, Reichmann, Trumbull, Cox & Stern, or any successor of said firm, I give and bequeath the sum of One Hundred Dollars ($100)

for each and every year (a fraction of a year to be deemed as a year) that she or he shall at my death have been in the employ of said firm or of any of its predecessor firms.

Article Fourth

In addition to the foregoing legacies, I give and bequeath to the following named persons (if they shall still be connected with said Judah, Reichmann, Trumbull, Cox & Stern, or any successor of said firm, at my death), as a token of my appreciation of her or his services, the further sum set opposite her or his name, respectively, viz.:

To Miss Jessie Cook, the sum of Ten Thousand Dollars ($10,000.);

To Mr. Guy E. Summers, the sum of Fifteen Thousand Dollars ($15,000.).

I also give and bequeath to Miss Mary E. Kaufman, who for many years has so ably assisted me, the sum of Thirty-five Thousand Dollars ($35,000.) whether she shall or shall not be connected with said Judah, Reichmann, Trumbull, Cox & Stern, or any successor of said firm, at my death, and if she shall be connected with said firm, or any successor of said firm, at my death, I give and bequeath to her the further sum of Fifteen Thousand Dollars ($15,000.) in addition to the sums that she will receive under the provisions of Article Third and of this Article.

(Appearing in left-hand margin: Henry M. Wolf.)

I direct that my Executor pay out of my general estate all inheritance, legacy, succession and estate taxes (both State and Federal) on all of the gifts and bequests contained in this Article Fourth and also in Article Third of this my will.

Article Fifth

Miss Mary E. Kaufman and then each member (at my death) of the firm of Judah, Reichmann, Trumbull, Cox & Stern, or any successor of said firm, in the order of his
12 seniority of association with the predecessors of said firm, shall be permitted to select and have as her or his own property two of the engravings or mezzotints or other pictures in my private office at the date of my death.

I also give and bequeath to Miss Mary E. Kaufman all my books published by The Grolier Club of the City of New York and The Caxton Club that may be anywhere in or about the offices of Judah, Reichmann, Trumbull, Cox & Stern, or any successor of said firm (including my private office) at my death. All the rest of the engravings or mezzotints or other pictures, as well as all the law books, furniture and fixtures belonging to me personally in the office of Judah, Reichmann, Trumbull, Cox & Stern, or any successor of said firm, and all my right, title and interest in and to the law library, books, office furniture, fixtures, equipment, records, books of account (expressly excepting all accounts receivable and the proceeds thereof, regardless of on what books the same may be carried or shown, and also expressly excepting all my interests in any firm heretofore or now known as Judah, Willard, Wolf & Reichmann, or any successor thereof,) files and other personal property (excepting always my other personal effects as distinguished from my professional effects and excepting all securities that may then be anywhere in the said office) I direct my Executors to sell, for such prices as they may deem fair, the said firm of Judah, Reichmann, Trumbull, Cox & Stern, or the successors of said firm, to have the first right to purchase the same, or any part thereof.

(Appearing in left-hand margin: Henry M. Wolf.)

Article Sixth

To each of the children who shall survive me of my nieces Agnes Wolf Stern and Bertha Wolf Raymondaud, I give and bequeath as a remembrance from their Uncle Henry the sum of Ten Thousand Dollars ($10,000.).

Article Seventh

(a) I give and bequeath to my friend, Frederick W. Gookin, of Winnetka, Illinois, if he survives me, the sum of Five Thousand Dollars ($5,000.).

(b) I give and bequeath to my friend, Professor William E. Dodd, of Chicago, Illinois, if he survives me, the sum of Five Thousand Dollars ($5,000.).

(c) I give and bequeath to my friend, Fred W. Smith, of Chicago, Illinois, if he survives me, the sum of Five Thousand Dollars ($5,000.).

(d) I give and bequeath to Thomas P. Heaphy, if he survives me, and also to Michael Collins, if he survives me, both of Chicago, Illinois, the sum of One Thousand Dollars ($1,000.) each, as a token of friendship from a citizen for the uniform courtesy, cheerfulness, efficiency and good judgment displayed by them as police officers for many years at the corner of LaSalle and Adams Streets, Chicago.

(e) I give and bequeath to Isaiah-Israel Temple (sometimes known as The Temple) of Chicago, Illinois, if my friend Joseph Stolz shall at my death then be Rabbi Emeritus of said Temple, the sum of Five Thousand Dollars ($5,000.).

(Left-hand margin: Henry M. Wolf.)

Article Eighth

I give and bequeath the following:

To Mrs. Hattie Judas, of Allentown, Pennsylvania, if she survives me, the sum of Ten Thousand Dollars ($10,000.);

To Helen Bendet and Mattie Bendet, daughters of the late Mrs. Rose Bendet, of Newark, New Jersey (elder sister of said Mrs. Hattie Judas), if they survive me, together the sum of Ten Thousand Dollars ($10,000.); and if they do not both survive me, said sum shall be given to the one of said two daughters who shall survive me;

To Valerie Dreyfus, of New York City, if she survives me, the sum of Five Thousand Dollars ($5,000.).

13 Article Ninth

I give and bequeath the following:

To my niece, Agnes Wolf Stern, if she survives me, One Hundred Thousand Dollars ($100,000.);

To my niece, Bertha Wolf Raymondaud, if she survives me, One Hundred Thousand Dollars ($100,000.);

To my nephew, Walter B. Wolf, if he survives me, One Hundred Thousand Dollars ($100,000.).

Article Tenth

If any of the persons named in this my will as a legatee of any sum of money shall at the time of my death be indebted to me, and any such indebtedness shall be evidenced

by a note or notes, I direct that my Executors shall deduct the amount of any such indebtedness (including the interest thereon) from such legacy to such person. If such legacy shall be less than the amount of such indebtedness and interest thereon, the Executors may accept the note or notes of the legatee so indebted, and turn such note or notes over to the Trustees of the trust fund that may hereinafter be created for the benefit of such legatee, either alone or in conjunction with others, in which event the Trustees shall, in addition to other remedies, collect at least quarter-yearly the amount of such note or notes, including interest thereon at four per cent. (4%) per annum, from the income payments, annuity or otherwise to which such beneficiary may be entitled under such trust, by applying twenty-five per cent. (25%) of such beneficiary's quarter-yearly income or annuity on such note or notes, and all of the trust articles of this my will shall always be subject to the provisions of this Article Tenth.

(Left-hand margin: Henry M. Wolf.)

Article Eleventh

I give and bequeath to Mary E. Kaufman and The Northern Trust Company (an Illinois corporation) as Trustees the sum of Three Hundred Thousand Dollars ($300,000.), and direct that out of the net income thereof there be paid to each of the following named persons, during his or her respective life, an annuity of Fifteen Hundred Dollars ($1500.) in quarter-yearly installments, the first of said installments to be paid at least three months after the date of my death, viz.:

To my dear cousin, Mrs. Jeannette Wolf, of Chicago, Illinois;

To my cousin Hattie Judas, of Allentown, Pennsylvania;

To my cousin Priscilla Wolf, of New York City;

To my cousin Henry J. Wolf, of New York City;

To my cousin (once removed) Mrs. Benjamin Tuska, of New York City.

All income from said trust fund provided for in this Article which shall in any year remain after the payment of the annuities hereinabove specified and the expenses and compensation of the Trustees in respect to the trusts created in and by this Article, including the sum of Fifteen

Hundred Dollars ($1500.) per year to Miss Kaufman for all such services as she may render as such Trustee under this Article Eleventh, shall be invested and reinvested and added to and become a part of the trust estate hereunder for not longer than twenty-one (21) years after my death, and in any event only until the death of the last survivor of said five annuitants, if such death occur within said twenty-one (21) years. If in any year the income of the trust shall be insufficient to pay the annuities and all expenses of the trust, including the compensation of the Trustees, then the Trustees may use so much of the principal as may be necessary to meet such deficiency.

(Left-hand margin: Henry M. Wolf.)

Upon the death of the last survivor of said five annuitants, I direct that the Trustees divide all securities and moneys then in their hands by virtue of this Article into three equal shares, and transfer and deliver one of
14 said shares to each of the following:

The University of Chicago,
The Art Institute of Chicago, and
The Chicago Bar Association, but subject always to the conditions, as to said The Chicago Bar Association, hereinafter in this Article contained.

If the Chicago Bar Association shall, either at the time of my death or within seven (7) years thereafter, be empowered by law, or cause to be organized a corporation empowered by law, to receive said shares as a charitable gift, free of inheritance taxes, and to establish and maintain a perpetual fund for the relief of deserving members of the Bar of Cook County, Illinois, who may become ill, incapacitated or superannuated, the Trustees shall, upon the termination of said trust, transfer and deliver the said share to said The Chicago Bar Association, if it be so empowered by law, or to such other corporation if it be so organized; but if said The Chicago Bar Association shall not, at my death, be, or shall not, within seven (7) years after my death, become so empowered by law, or cause to be organized a corporation empowered by law, as aforesaid, and always free of inheritance taxes, then the share and all accumulations in respect thereto which would otherwise have gone to it or to such other corporation, shall be transferred and delivered to The Visiting Nurse Association of Chicago.

(Left-hand margin: Henry M. Wolf.)

All of said respective shares shall be given to said named respective organizations in the name and in memory of my Parents Moses and Bertha Wolf and my Brother Albert H. Wolf, and said shares shall forever thereafter be held, kept, invested and reinvested separate and apart from all other funds of said organizations, and only the net income from said funds shall be used and then only for the purposes and in the manner hereinafter provided.

I direct that the sum left to The University of Chicago shall be set apart by it for the foundation of at least three (3) scholarships, each to the known as "The Moses, Bertha and Albert H. Wolf Scholarship", and the net annual income therefrom shall be awarded and given annually to such students who shall have respectively completed one-fourth, one-half and three-fourths of their undergraduate courses, at the beginning of each college year, in the Fall of the year, in the academic or classical or humanities department of The University of Chicago as shall be selected by the Faculty thereof as the leading or most promising scholars who shall have respectively completed one-fourth, one-half and three-fourths of their undergraduate courses, who may or may not be the student having the highest standing or percentage in his or her studies, basing the selection on the record and work of each appointee during the preceding college year.

(Left-hand margin: Henry M. Wolf.)

I direct that the net income of the share given to The Art Institute of Chicago shall be used in the purchase of books and publications suitable for and to form a part of the library of said The Art Institute of Chicago, which books and publications shall have placed inside or on the inside cover thereof some suitable bookplate or inscription, to be approved by the Trustees of said The Art Institute of Chicago, which shall show that the said books and publications were paid for from the said Moses, Bertha and Albert H. Wolf Memorial Fund, and I direct that only the net income of said Fund be used for that purpose.

If and when The Chicago Bar Association, or such corporation so organized by it, shall become entitled to the said share under the conditions hereinabove set forth, the net income from said share shall be distributed each year to or in aid of deserving members of the Bar of Cook County, Illinois, who shall be ill, incapacitated or superannuated and who shall apply for assistance or on whose behalf some reputable members of the Bar of

Cook County shall have made such application, and the Officers and Board of Managers (whether so termed or not) shall in the case of every such application be the judge of the advisability of granting such assistance.

If and when The Visiting Nurse Association shall become entitled to said share under the provisions hereinabove set forth, no part of the principal thereof shall be used, but the net income therefrom shall be used by The Visiting Nurse Association to employ or maintain two or more trained nurses in its work in the City of Chicago.

Article Twelfth

I give and bequeath the sum of One Million Two Hundred Thousand Dollars ($1,200,000.) to said Mary E. Kaufman and said The Northern Trust Company, as Trustees, to be held and disposed of by them under and pursuant to the following trusts:

(Left-hand margin: Henry M. Wolf.)

(a) The Trustees shall pay the net income from the trust estate to my niece, Agnes Wolf Stern, during her lifetime, in at least quarter-yearly installments, the first of said installments to be paid three (3) months after the date of my death.

(b) Upon the death of the said Agnes Wolf Stern, either before or after my death, the said Trustees shall expend during the life of the trusts under this sub-paragraph (b), so much of the net income from the trust estate as they may deem advisable or desirable for the support, education, maintenance and comfort of such of the children of said Agnes Wolf Stern as may be in life at the time of my death. Any net income not so expended by them shall be accumulated for a period not longer than twenty-one (21) years after my death, and not longer, in any event, than the period of the life of the trusts under this Article.

The trusts under this Article Twelfth shall terminate upon the death of the said Agnes, or at the end of fifteen (15) years after my death, whichever is later in time. At the end of the trust period, the Trustees shall convey, assign and deliver to each one then in life of Agnes' children (who shall have been in life at the time of my death) the sum of Two Hundred and Fifty Thousand Dollars ($250,000.), and per stirpes to the then living, lawful, lineal descendants of each of the children of the said Agnes (that

is her children who were in life at the time of my death) who shall have died prior to the end of the trust period, the sum of Two Hundred and Fifty Thousand Dollars ($250,000.). At the end of the trusts under this Article Twelfth, the Trustees shall convey, assign and deliver the then remainder of the said trust estate to the following charitable institutions, or to such of them as shall then be engaged in carrying on their present, or similar, activities in Chicago, Illinois, and only the net income from said funds shall be used by said respective institutions for their respective charitable purposes, viz.:

Michael Reese Hospital of Chicago,
The Visiting Nurse Association of Chicago,
The University of Chicago,
The Jewish Charities of Chicago.

(Left-hand margin: Henry M. Wolf.)

Article Thirteenth

I give and bequeath to the said Mary E. Kaufman and The First National Bank of Chicago (a United States corporation), as Trustees, the sum of Two Hundred and Fifty Thousand Dollars ($250,000.), and direct that all the net income thereof be paid to my niece Bertha Wolf Raymondaud, the daughter of my late Brother Albert H.
16 Wolf, during her lifetime in quarter-yearly installments, the first of said installments to be paid at least three (3) months after the date of my death. Upon the death of the said Bertha Wolf Raymondaud, or upon my death (whichever shall be later in time), I direct that the Trustees convey, assign and deliver, per stirpes, to the then living, lawful, lineal descendants of the said Bertha the sum of One Hundred Thousand Dollars ($100,000.), and the Trustees shall divide the remaining trust estate hereunder, or all thereof if there be then no such descendant of Bertha in life, into four (4) equal shares, and convey, assign and deliver one of said shares to each of the following upon the conditions hereinafter set forth:

The Jewish Charities of Chicago,
United Charities of Chicago,
Michael Reese Hospital of Chicago,
The Presbyterian Hospital of Chicago.

The gifts to each of said two Hospitals shall be on condition that before they respectively receive such share, or

any part thereof, they shall severally enter into a valid, firm and binding agreement with The Chicago Bar Association (an Illinois corporation organized not for pecuniary profit) and its successors (and in all respects satisfactory to said Association and said Trustees), that said Hospitals will respectively, in perpetuity, furnish at least one first-class hospital room, with or without bath as may be required, without any charge whatsoever for such room or for food, service and general attendance of nurses (as distinguished from and not meaning special day or night nurses), to one or more deserving members of the Bar of

(Left-hand margin: Henry M. Wolf.)

Cook County, Illinois, who may be or become ill or bedridden and may require hospital care, such members of the Bar to be selected and nominated by the Officers and/or Board of Managers (whether so termed or not) of The Chicago Bar Association or by an appropriate committee of the Board of Managers of said Bar Association who may from time to time be appointed in accordance with the by-laws and rules of said Association, for an aggregate in each hospital of at least one patient for every day in the year. Should said Michael Reese Hospital be unwilling or decline to make the arrangement and contract herein outlined, then the share which would otherwise be payable to it shall be paid to United Charities of Chicago. Should said The Presbyterian Hospital of Chicago be unwilling or decline to make the arrangement and contract herein outlined, then the share which would otherwise be payable to it shall be paid to The Jewish Charities of Chicago. I direct that all of said respective shares shall be transferred and delivered to said named respective charitable organizations in the name and in memory of my Parents, Moses and Bertha Wolf, and my Brother Albert H. Wolf; and on condition that said shares shall forever thereafter be held, kept, invested and reinvested separate and apart from any and all other funds of said organizations and that no part of the principal thereof shall be used and that only the net income from said funds shall be used, and then only for the purposes hereinbefore provided as to said hospitals, and only for the general purposes of said The Jewish Charities of Chicago and the United Charities of Chicago.

(Left-hand margin: Henry M. Wolf.)

Article Fourteenth

I give and bequeath to my nephew, Walter B. Wolf, and to said The First National Bank of Chicago, as Trustees, to be held and disposed of by them for and upon the following trusts, the sum of Two Hundred and Fifty Thousand Dollars ($250,000.), and direct that they pay the
17 net income thereof, quarter-yearly, to my nephew, Walter B. Wolf, during his lifetime, the first payment to be at least three (3) months after the date of my death. Upon the death of the said Walter B. Wolf, the Trustees shall convey, assign and deliver the said trust fund then in their hands to the following charitable institutions, or to such of them as shall then be actually engaged in carrying on their present activities, or similar activities, in Chicago, Illinois, and only the net income from said funds shall be used by said respective institutions for their respective charitable purposes, viz.:

Michael Reese Hospital of Chicago,
The Visiting Nurse Association of Chicago,
The University of Chicago,
The Jewish Charities of Chicago.

Article Fifteenth

For many years I have thought that it would be most desirable that a non-sectarian free hospital be located in Cook County, Illinois as distant as practicable from the noise, smoke, dirt, dust, gases and odors of the City of Chicago, due regard being also had in the selection of a site for such hospital to its accessibility by the medical and surgical staff and attendants as well as by the public, and with that object in mind and to aid in the foundation, erection, operation, endowment and perpetual maintenance of such an institution in Cook County, Illinois, I hereby give and bequeath the sum of One Million Dollars ($1,000,000.) to said Mary E. Kaufman and said The Northern Trust Company, as Trustees, in trust for and upon the following trusts and purposes:

(Left hand margin: Henry M. Wolf.)

(a) Said Trustees shall, for a term not to exceed fifteen (15) years from and after my death (such term being hereinafter referred to as the "trust period"), hold, manage,

invest and reinvest the trust fund, and all accumulations thereof that shall not have been used in accordance with the terms of this Article. If and when during said trust period The Jewish Charities of Chicago (an Illinois corporation) shall satisfy the Trustees that said The Jewish Charities of Chicago (1) has raised and set apart sufficient funds aggregating at least One Million Two Hundred and Fifty Thousand Dollars ($1,250,000.), exclusive of this gift, to be used solely and always for such purposes; and also (2) has acquired or caused to be acquired (and paid for in full) without recourse to said sum of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000.) a suitable site, North and outside of the present corporate limits of the City of Chicago and South of the North boundary line of Cook County, Illinois, and within three miles of the shore of Lake Michigan; and also (3) is adequately prepared to and has made adequate plans for the erection on such site and for the maintenance and operation in perpetuity of a non-sectarian hospital to be forever known as The Jewish Country Hospital and Convalescent Home, then the Trustees are hereby empowered to and they shall promptly, after being reasonably satisfied that said The Jewish Charities of Chicago has reasonably complied with all the foregoing provisions and terms of this Article, which shall be considered as conditions precedent, convey, assign and deliver to said The Jewish Charities of Chicago all of said trust fund that shall not have been used in accordance with the terms of this Article, including all accumulations and additions thereto (after deducting only the reasonable costs and expenses of this trust and 18 the Trustees' compensation), and thereafter said The Jewish Charities of Chicago shall use said trust estate, together with the additional fund so raised by it, for the foundation, construction, equipment, operation, endowment and perpetual maintenance of such a hospital so located, the initial endowment fund of which hospital shall not be less than One Million Eight Hundred Thousand Dollars $1,800,000.).

(Left hand margin: Henry M. Wolf.)

The entire hospital with all departments (as are customary or necessary for a modern, well managed hospital) need not be built and completed within the trust period, provided my Trustees shall be reasonably satisfied that any departments not completed within the trust period will be com-

pleted and begin to be operated within a reasonable time, not to exceed five (5) years, thereafter.

In estimating said additional fund of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000.), valid subscriptions of responsible parties may be taken into account in ascertaining whether said fund has been raised.

Said hospital shall be open to all classes of people regardless of color or creed, and there shall be accommodations both for the patients who shall be able to pay as well as for patients who are poor and unable to pay. If The Jewish Charities of Chicago at any time or times deems it best for the recovery of any non-paying patient at Michael Reese Hospital that such patient be removed to The Jewish Country Hospital and Convalescent Home, it may cause the same to be done.

(Left hand margin: Henry M. Wolf.)

Said hospital shall, in perpetuity, furnish at least two first-class hospital rooms, with or without bath as may be required, without any charge whatsoever for such room or for food, service and general attendance of nurses (as distinguished from and not meaning special day or night nurses), to at least two deserving members of the Bar of Cook County, Illinois who may be or become ill or bedridden and may require hospital care, such members of the Bar to be selected and nominated by the Officers and/or the Board of Managers (whether so termed or not) of The Chicago Bar Association or by an appropriate committee of the Board of Managers of said Bar Association who may from time to time be appointed in accordance with the by-laws and rules of said Association, for an aggregate in said Hospital of at least two patients for every day in each year.

If The Chicago Bar Association at any time or times deems it advisable that any patient, being a member of the Bar of Cook County, Illinois, who may be in the Michael Reese Hospital and/or The Presbyterian Hospital of Chicago, under the provisions of Article Thirteenth hereof, be removed from the Michael Reese Hospital and/or The Presbyterian Hospital of Chicago to The Jewish Country Hospital and Convalescent Home and there be given similar first-class free room, food, service and attendants, said Association, acting by or through an appropriate committee, may cause the same to be done, my intent being that at least two such patients shall at all times have such first-class free room, food, service and attendants.

I recommend, but do not insist that:

(1) A suitable and desirable site (of at least fifteen (15) acres) shall be obtained on elevated ground and, if possible, opposite, adjoining or near a Forest Preserve District Park, and that such part of the site as may not be used for building and hospital purposes be used for flower and vegetable gardens.

(Left hand margin: Henry M. Wolf.)

(2) The Jewish Country Hospital and Convalescent Home be so constructed and equipped with such suitable pavilions as to accommodate all classes of people both poor and rich.

19 (3) The Jewish Country Hospital and Convalescent Home shall be subject always to such reasonable rules regulating the admission, conduct and discharge of patients and otherwise in every respect (including the charges to pay patients) as The Jewish Charities of Chicago or the regularly elected officers of said The Jewish Country Hospital and Convalescent Home may from time to time establish, and in case of any question as to any such rule or otherwise, then the rule or practice at Michael Reese Hospital of Chicago, Illinois shall be followed.

(4) The Jewish Charities of Chicago may, if it deems best, cause a separate corporation to be organized to acquire or hold title to said site and to erect, operate and maintain said The Jewish Country Hospital and Convalescent Home.

(b) If during the trust period The Jewish Charities of Chicago shall not comply with the conditions hereinabove in paragraph (a) required of it, then the Trustees shall, at the end of the trust period, divide and distribute the entire trust estate in their hands by virtue of this Article (after deducting only the reasonable costs and expenses of this trust including the Trustees' compensation) equally to the following four institutions located in Chicago, Illinois, or to such of them as shall then be actively engaged in carrying on their present or similar activities in Chicago, Illinois, viz.:

Michael Reese Hospital of Chicago,
The Visiting Nurse Association of Chicago,
The University of Chicago,
The Jewish Charities of Chicago.

(Left hand margin: Henry M. Wolf.)

And in such event each of said four institutions last named shall forever hold, manage, invest and reinvest the principal of such fund as shall come to it hereunder and separate and apart from all its other funds and use only the income therefrom for its corporate purposes.

(c) Out of said trust estate said Trustees shall, for the purpose of furthering non-sectarian free hospitals in Cook County, Illinois, in the country outside of the present corporate limits of Chicago, make the following payments until the trust estate shall be finally distributed, as in this Article provided: To the building fund of any non-sectarian free hospital which may at my death be organized and operated (not for pecuniary profit) in Cook County, Illinois, outside of the present corporate limits of Chicago, and also to the building fund of any such non-sectarian hospital which may at my death be building such a hospital or which may thereafter during said trust period build such a hospital in Cook County outside of the present corporate limits of Chicago, each the sum of One Thousand Dollars ($1,000.). Should any such non-sectarian free hospital then built or building or thereafter built desire that One Thousand Dollars ($1,000.) be given to its building fund, it may apply to the Trustees therefor, and thereupon the Trustees shall, upon being satisfied that the applicant comes within the provisions of this paragraph (c), forthwith pay said sum of One Thousand Dollars ($1,000.) to such hospital during the trust period.

(d) The decision and action of the Trustees under this Article or of the one of them then acting, if only one be then acting, as to whether the said trust fund shall go to the said The Jewish Charities of Chicago for the purposes aforesaid, shall be binding and conclusive on all persons and beneficiaries and contingent beneficiaries whomsoever.

(Left hand margin: Henry M. Wolf.)

20 Article Sixteenth

All of the rest, residue and remainder of the property of whatsoever kind and nature, real, personal and mixed, and wheresoever located, which I may own or be in any way entitled to at the time of my death (and including therein all lapsed bequests and lapsed gifts, in trust or otherwise), I give, devise and bequeath to the following charitable

institutions, or to such of them as shall at the time of my death be actually engaged in carrying on their present activities, or similar activities, in Chicago, Illinois, and only the net income from said funds shall be used by said respective institutions for their respective charitable purposes, viz.:

Michael Reese Hospital of Chicago,
The Visiting Nurse Association of Chicago,
The University of Chicago,
The Jewish Charities of Chicago.

Article Seventeenth

All gifts which I have made in this my will, in trust or otherwise, to charitable institutions, in each case I make in the name and in the memory of my Parents, Moses and Bertha Wolf, and my Brother Albert H. Wolf.

Article Eighteenth

I hereby nominate and appoint said Mary E. Kaufman and said The Northern Trust Company to be the Executors of this my Last Will and Testament, and direct that said Mary E. Kaufman be not required to give any bond or undertaking as such Executor other than her own individual bond.

(Left hand margin: Henry M. Wolf.)

If any individual Trustee should at any time refuse or become unable to act or resign or die, then the corporate Co-Trustee of the respective Trust shall thereafter act as sole Trustee, and as such sole Trustee shall have and be vested with all the titles, powers (both discretionary and otherwise), discretions, rights, duties and obligations as are by this will given to and imposed on both Trustees of the respective trusts; and I direct that my Executors and also my Trustees be paid reasonable compensation for their services, to be deducted from the income of said respective trust funds.

Article Nineteenth

If my estate shall be or become insufficient to pay in full all the bequests, legacies, gifts and annuities by this will

made in trust and otherwise, then I direct that all the bequests, legacies, gifts and annuities made in trust or otherwise by this will in Articles First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, Twelfth, Thirteenth and Fourteenth, whether general, specific or of any other kind, shall be carried out and paid in full, and that the others shall abate in proportion to their respective amounts.

Article Twentieth

Wherever in and by my will I have provided that a bequest or gift, in trust or otherwise, shall be paid, it is my will that my Executors shall have, and I hereby give to them sole and unlimited discretion to pay the amount of any such bequest or gift either wholly or partly in cash, or either wholly or partly in securities, and my Executors are hereby given full and unlimited discretion to determine the proportion of either cash or securities and the amounts of securities of any kind (whether stocks, bonds, promissory notes or mortgage notes), and the valuations thereof that they may transfer and pay over to any legatee, bene-
21 ficiary or trustee on account of any such bequest or gift; and I further direct that the determination that my Executors shall express in respect to any and all such matters shall be final, conclusive and binding upon any and all parties whomsoever.

(Left hand margin: Henry M. Wolf.)

Article Twenty-First

I give to my Executors as to the executorship and to the respective Trustees or the respective Trustee, or sole Trustee, qualified and at the time acting hereunder, as to their respective trusteeships, power to manage, control, preserve, lease, exchange (for like property or property different in character), sell and resell, convey, partition, invest, reinvest, improve, repair, remodel, care for and protect my estate and the respective trust funds, and every part thereof, at any time or times in the hands of them, or any of them, whether acquired by them hereunder or by purchase or otherwise, all in accordance with their best judgment and discretion. Any sale or exchange

may be made upon such terms as to cash and credit and security and upon such terms as to them, him, her or it shall seem best, and no purchaser from my said Executors or from my said Trustees shall ever be obliged to see to the application of the purchase money, and no person paying any moneys or turning over any property to my Executors or Trustees acting at the time need see to the application thereof. Said Executors and said respective Trustees, or sole Trustee, qualified and at the time acting hereunder, may make investments of said funds and respective trust funds, or any of them, at any time in the hands of them, or any of them, respectively, not only in the bonds and stocks of municipal corporations and in State and National bonds, but also in the first mortgage bonds of railroad, industrial and business corporations, as they, he, she or it may see fit, and in first mortgages on real estate, either improved or unimproved, either in the State of Illinois or elsewhere; my intent being that my Executors and my said respective Trustees, or sole Trustee, shall (while and so long as they shall act hereunder) have the same power to make such investments of any funds and of trust funds, respectively, that they or he or she or it shall see fit, that I, if living, would personally have been able to make. Said respective Trustees or sole Trustee may lease any real property at any time a part of the respective trust funds for terms up to but not exceeding ninety-nine (99) years, and any such lease may be made to begin in possession at once or in the future.

(Left hand margin: Henry M. Wolf.)

I hereby authorize my Executors and Trustees or Trustee to retain any assets or properties at any time in their hands, in the form in which they shall respectively receive the same; to borrow money; and to pledge, mortgage, or otherwise encumber all or any part of the respective assets and properties at any time in their hands; and to determine how all receipts and disbursements shall be credited, charged or apportioned, as between principal and income, and the decision of the Executors or Trustees or Trustee (as the case may be) in regard thereto shall be final and conclusive on all parties in interest, except that all stock dividends shall be principal; and provided that in determining the amount of net income for distribution among the beneficiaries of the respective trust estates, the Trus-

tees or Trustee shall make no deduction from or
22 charge against the income derived from the trust estate on account of the depreciation or amortization of any investments made by the Trustees or Trustee; and all income, like interest on money lent, shall be considered and treated as accruing from day to day, and shall be apportioned as to time accordingly.

(Left hand margin: Henry M. Wolf.)

The powers, discretionary powers, and discretions hereinabove given to my Executors shall not be limited to acts done in the administration of my estate in the court of probate, but shall be general and unlimited powers, discretionary powers, and discretions, so long as my Executors, or either of them, shall be acting as such.

If any corporation in this, my will, designated as executor or co-executor or trustee or co-trustee, shall either before or after my death merge or consolidate with any other corporation or corporations, the corporation resulting from such merger or consolidation shall become and be the executor or co-executor or trustee or co-trustee hereunder with the same effect to all intents and purposes as if it had been originally named in this my will for those purposes, and any such resulting corporation shall have and be vested with all of the titles, duties, rights, powers, discretionary powers and discretions in this my will given to the corporation named in this my will as executor or co-executor or trustee or co-trustee.

For the purposes of divisions and distributions under this my will, my Executors and Trustees, or sole Trustee, shall respectively have the power to allot in kind, or part in cash and part in kind (including the allotment of undivided interests in real estate), any property or assets at the time a part of my estate or of the respective trust funds, and every such allotment shall be binding upon all persons and interests whatsoever.

If my respective Trustees or Trustee at any time own any property, real, personal or mixed, with any others of my Trustees or with other persons, corporation or otherwise, they may join with such others in any lease, sale, deed, contract or other undertaking that they may deem advisable, and assume such obligations in connection therewith as they may deem best.

(Left hand margin: Henry M. Wolf.)

My Trustees shall make all payments of income from my trust estate, and shall convey and distribute the principal of my trust estate to the beneficiaries thereof, only upon the personal receipt of the respective recipient or recipients from time to time of such income and of the respective beneficiaries of such principal and in no other manner, and no one entitled to receive anything under my will shall ever in any way anticipate the payment or distribution of any of the income or of any of the principal of my estate, nor shall any such person so entitled under my will to receive any of the income or any of the principal of my trust estate ever convey, assign, pledge or mortgage any interest whatever in either the income from my trust estate or the principal thereof, nor shall any of my trust estate (whether principal or income) in the hands of my Trustees or Trustee be subject to the control, claim or disposition of any of the beneficiaries of any of the income or principal of said trust estate, or of any spouse of any beneficiary, or of any person whomsoever, until such income or principal shall respectively be actually paid to the recipients thereof, nor be deemed asse[illegible] in favor of the creditors of any beneficiary so receiving any of said income or principal or of the creditors of any spouse that any such recipient or beneficiary may have,
23 and it is my will and I direct that no creditor, assignee, mortgagee or spouse of any of the persons named or designated by me in my will to receive or get the benefit of any income or principal under my will, shall ever be entitled to take, appropriate, have recourse to, get the benefit of, or reach in any way whatever, any of the property or estate or income of any kind disposed of or held in trust under my will, by way of judgment, execution, attachment, garnishment or any other proceeding of any kind whatsoever, whether in law or in equity.

(Left hand margin: Henry M. Wolf.)

All of the titles, powers (discretionary or otherwise), discretions and duties in this Article enumerated shall extend to and be vested in the respective Executors and the respective Trustees or Trustee (who may be qualified and acting at the time of the exercise thereof) as to the respective trusts under this my will.

Each corporate Trustee shall always have the sole custody of all of the assets of the trust estate of which it

shall be Co-Trustee or Trustee, and shall alone be responsible for the safe and proper custody thereof.

In Witness Whereof, I have hereunto set my hand and seal this eleventh (11th) day of June, A. D. 1934.

Henry M. Wolf. (Seal)

The foregoing instrument contained on this and the twenty-four (24) preceding pages, typewritten on one side only, was on the eleventh (11th) day of June, A. D. 1934, signed, sealed, published and declared by Henry M. Wolf, the testator therein named, as and for his Last Will and Testament in the presence of us, the undersigned, who at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto, having first also seen the said testator's name written by him in full on the margin of each page thereof.

Arthur F. Lindley, residing at 1336 Chase Ave., Chicago, Ill.

Roy Hall, residing at Riverside, Ill.

Joseph H. Gilby, residing at 5423 Blackstone Ave., Chicago.

John O'Connor, residing at Kenilworth, Ill.

(Left hand margin: Henry M. Wolf.)

Filed June 10, 1935. Mitchell C. Robin, Clerk.

Will proved and admitted to record in open Court this 22 day of August, A. D. 1935.

Charles T. Allen,
Probate Judge.

State of Illinois, } ss.
County of Cook. }

In the Probate Court of Cook County.

Proved and admitted to record in open Court this 22 day of Aug. A. D. 1935.

Mitchell C. Robin,
Clerk.

24 In the Name of God, Amen.

I, Henry M. Wolf, of Chicago, Illinois, being of sound and disposing mind and memory, do make this Codicil to my Last Will and Testament which is dated the eleventh (11th) day of June, A. D. 1934.

Article First

Although it is possible that Judah, Reichmann, Trumbull, Cox & Stern, or the successor of that firm, might prefer, because of my interest in sundry assets, to be relieved from acting as attorneys for my Executors and for my Trustees because of embarrassment that might be caused by such interest, nevertheless, such has always been and is my confidence in their integrity and fairness in such case, even where their interests are involved, that I have no hesitation in asking that firm to act as such attorneys, and I do ask them to act as such.

Article Second

Except as expressly modified by this codicil, my said Last Will and Testament shall be and remain in full force and effect.

In Witness Whereof, I have hereunto set my hand and seal this eleventh (11th) day of June, A. D. 1934.

Henry M. Wolf. (Seal)

The foregoing instrument, contained on this one (1) page, typewritten on one side only, was on the eleventh (11th) day of June, A. D. 1934, signed, sealed, published and declared by Henry M. Wolf, the testator therein named, as and for a Codicil to his Last Will and Testament dated June eleventh (11th), A. D. 1934, in the presence of us, the undersigned, who at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses to said Codicil.

Arthur F. Lindley, residing at 1336 Chase Ave., Chicago, Ill.

Roy Hall, residing at Riverside, Ill.

Joseph H. Gilby, residing at 5423 Blackstone Ave., Chicago.

John O'Connor, residing at Kenilworth, Ill.

Filed June 10, 1935. Mitchell C. Robin, Clerk.

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State of Illinois, } ss.
County of Cook. }

In the Probate Court of Cook County.

Proved and admitted to record in open Court this 22 day of Aug., A. D. 1935.

Mitchell C. Robin,
Clerk.

24½ EXHIBIT "B".

25 Claim.

Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

To Be Filed With the Collector Where Assessment Was Made or Tax Paid.

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☒ Refund of Tax Illegally Collected.
☐ Refund of Amount Paid for Stamps, Unused, or Used in Error or Excess.
☐ Abatement of Tax Assessed (not applicable to estate or Income taxes).

Collector's Stamp
Date received

State of Illinois, } ss.
County of Cook }

Type or print

Name of taxpayer or purchaser of stamps The Northern Trust Company

and Mary E. Kaufman, Executors of the Estate of Henry M. Wolf, Deceased.

Business address 50 South La Salle Street, Chicago,
(Street) (City)
Illinois.
(State)

Residence .....

The deponents, being duly sworn according to law, depose and say that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed First District of Illinois, Chicago, Illinois.
2. Period (if for income tax, make separate form for each taxable year) from ..... 19..., to ....., 19.....
3. Character of assessment or tax Estate tax and interest thereon.
4. Amount of assessment, $461,814.03; dates of payment (Tax $436,744.65—5/28/36, $23,134.92 on 11/13/37; Int. $1,934.46—11/13/37.
5. Date stamps were purchased from the Government.
6. Amount to be refunded, or such other amount as may be legally refundable, $119,069.43.
7. Amount to be abated (not applicable to income or estate taxes) $.....
8. The time within which this claim may be legally filed expires, under Section 810 of the Revenue Act of 1932, on or about May 28, 1939.

The deponents verily believe that this claim should be allowed for the following reasons:

See statement attached hereto, hereby incorporated herein by reference as part hereof.

The Northern Trust Company
By: Paul J. Chittenden
Its Asst Sec'y.

Mary E. Kaufman
Executors of the Estate of Henry M. Wolf, Deceased.

Sworn to and subscribed before me this 7th day of March, A. D. 1938.

Jessie Cook,
Notary Public.

(Seal)

26 **Certificate.**

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Character of assessment and period covered	List	Year	Month	Account No. or Page	Line	Amount assessed	Paid, Abated, or Credited Date	Amount	Pd. Ab. Cr.
Ret. Est. Tax	Misc	1936	May	103	2	$436,744.65	5/28/36	$436,744.65	Pd.
Def. " "	"	1937	Oct. 2nd Suppl.	100	5	23,134.92	11/15/37	23,134.92	Pd.
Interest	"	"	"	"	"	1,934.46	11/15/37	1,934.46	Pd.
					Total,	$461,814.03	Total,	$461,814.03	Pd.

(In left-hand margin) Claim No. .....

(In right-hand margin) Claim No. .....

I certify that the records of this office show the following facts as to the purchose of stamps:

To Whom Sold or Issued	Kind	Number	Denomination	Date of sale or issue	Amount	If special tax stamp, state: Serial number	Period commencing—
.....	.....	.....	.....	.....	$	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....

Carter H. Harrison, *Collector of Internal Revenue.* First Illinois (District)

Claim examined by—
E. T. K.

Committee on Claims

Amount claimed $119,069.43 .....

Amount allowed $ 0.00 .....

Amount rejected $119,069.43 .....

Claim approved by—
T. H. Cuselaber 5/7/38
Chief of Division.

Instructions.

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

27 Henry M. Wolf Estate.

The Northern Trust Company and Mary E. Kaufman, Executors Under the Last Will and Testament of Henry M. Wolf, Deceased.

Henry M. Wolf died testate on June 4, 1935. During his lifetime and at the time of his death he was a citizen and resident of Chicago, Illinois. In due course the decedent's Last Will and Testament and the Codicil thereto were proved and admitted to record in the Probate Court of Cook County, Illinois, and the decedent's estate has been and is being administered under the jurisdiction of said Court. Letters Testamentary were duly issued to the North-

ern Trust Company and Mary E. Kaufman, both citizens and residents of Chicago, Illinois, who are the duly appointed, qualified and acting executors under the decedent's Last Will and Testament. Copies of said Last Will and Testament and the Codicil thereto were filed with the Commissioner of Internal Revenue and are hereby by reference made part hereof.

The executors, hereinafter referred to as the claimants, duly filed an estate tax return for the estate of the decedent with the United States Collector of Internal Revenue at Chicago; Illinois. The said return is hereby by reference made a part hereof. In the said return they reported a gross estate of $4,238,805.97; total funeral expenses, administration expenses, debts and claims, and executors' and attorneys' fees aggregating $290,060.44; total specific bequests and legacies other than charitable of $1,816,679.81; deductions for charitable bequests in the aggregate amount of $1,656,650.73; a net estate for tax imposed by the Revenue Act of 1926 of $2,192,094.80, and a net estate for additional tax imposed by the Revenue Act of 1932 of $2,242,094.80. The tax of $436,744.65 shown to be due by the said return was paid by the executors to the
28 Collector of Internal Revenue at Chicago, Illinois, under protest, on or about May 28, 1936.

Under the will of the decedent there were specific bequests to charitable organizations within the meaning of Section 303 (a) (3) of the Revenue Act of 1926, as amended, as follows: Article Seven $5,000.00; Article Eleventh $248,178.33; Article Twelfth $157,611.28; Article Thirteenth $53,248.98; Article Fourteenth $106,658.15; and Article Fifteenth $1,000,000.

Under the decedent's will all the rest, residue and remainder of his estate, after specific bequests and legacies, was bequeathed and devised to charitable organizations within the meaning of Section 303 (a) (3) of the Revenue Act of 1926, as amended. No provision was contained in the decedent's will for the payment in whole or in part out of the said residuary bequests or devises of any part of any estate, succession, legacy or inheritance tax, nor was any such tax payable out of said residuary estate by the law of the jurisdiction of Illinois under which the estate was administered or by the law of the jurisdiction under which the taxes were imposed.

Upon audit of the estate tax return, the Commissioner of Internal Revenue determined and assessed an additional

estate tax in the amount of $23,134.92, with interest thereon of $1,934.46, or a total of $25,069.38, which amount the claimants paid to the Collector of Internal Revenue at Chicago, Illinois, under protest, on or about November 13, 1937. The Total estate tax liability thus determined by the Commissioner of Internal Revenue was $459,879.57.

29 The determination of the Commissioner is set forth in his letters to the Northern Trust Company, et al., executors, under dates of December 1, 1936, June 8, 1937 and November 1, 1937, all of which are incorporated herein by reference as part hereof.

The Commissioner's determination of the estate tax liability of the decedent's estate was based upon his determinations as follows: a gross estate of $4,238,305.97; deductions for funeral expenses, attorneys' fees, executors' commissions, miscellaneous administration expenses and debts of the decedent in the aggregate amount of $283,810.44; specific bequests and legacies to other than charitable organizations and unallowable deductions in the aggregate amount of $1,921,195.71; specific bequests, legacies and devises to charitable organizations within the meaning of Section 303(a)(3) of the Revenue Act of 1926, as amended, in the aggregate amount of $1,570,696.74; leaving a net residuary estate (before any reduction on account of Federal estate tax) of $463,103.08: In computing the amount of the said residuary estate allowable as a deduction on account of the decedent's bequests and devises of his residuary estate to charitable organizations, the Commissioner calculated by algebraic formula that the total amount of the Federal estate tax would be $459,879.57, reduced the residuary estate by said sum and allowed the remainder of $3,223.51 as a deduction for said charitable bequests and devises under the residuary clause of said will. Thus, instead of taxing the net estate, as required by law, the Commissioner taxed the net estate increased by the amount of the estate tax computed by him. The substance and effect of the Commissioner's computation was to determine

30 and levy an estate tax on a tax, since he reduced the residuary charitable bequests and devises by the algebraically computed amount of the estate tax and then computed the estate tax on the basis of such charitable bequests so reduced.

The claimants are informed and believe and therefore aver that the Commissioner claimed and claims authority to compute, determine and allow deduction for residuary

bequests and devises for charitable purposes in the manner above set forth by reason of the provisions of Section 807 of the Revenue Act of 1932. The said Section is (1) unconstitutional and void as applied by the Commissioner in determining the estate tax liability of the decedent's estate, but (2), if constitutional, is inapplicable in computing and determining the estate tax liability of the decedent's estate, and (3), if constitutional and applicable in the determination of the estate tax liability in the case of this estate, it is required to be applied without the use of an algebraic formula.

(1) If Section 807 of the Revenue Act of 1932 is applicable in this case and requires computation in the manner made by the Commissioner of Internal Revenue, it is unconstitutional, because the requirement (a) that the incidence of the tax must be regarded in the levying of the tax and (b) that the amount of the tax shall be measured by the tax itself is so discriminatory and unreasonable, capricious and arbitrary as to deny to the claimants the due process guaranteed by the Fifth Amendment to the Constitution of the United States. *Edwards* v. *Slocum*, 267 Fed. 631, affirmed 264 U. S. 61.

(2) Section 807 of the Revenue Act of 1932 provides as follows:

"Sec. 807. Deduction of bequests, etc., to charity.

Sections 303(a)(3) and 303(b)(3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:

'If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.' ".

Though the Commissioner in determining the estate tax liability reduced the residuary bequests, legacies and devises to charitable organizations otherwise deductible by the total amount of the Federal estate tax as computed by him, which he regarded as being payable out of such residuary bequests, legacies and devises, in fact no estate, succession, legacy or inheritance tax was payable out of such

residuary bequests, legacies and devises to charitable organizations either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the tax. Except a direction in Article Fourth of his will that all inheritance, legacy, succession and estate taxes, both State and Federal, on all the gifts and bequests contained in Articles Third and Fourth of his will should be paid by his Executor out of his general estate, the decedent's will and the codicil thereto contained no provision regarding the payment of Federal estate tax or Illinois inheritance taxes, and hence, under Section 807, the law of the jurisdiction of administration, namely, Illinois, controls. By the law of Illinois, the Federal estate tax is payable, not out of the residuary bequests and devises to charities, but out of the general or gross estate of the decedent as an expense of administration.

(3) In the alternative and in any event, and whether
32 or not the provisions of Section 807 of the Revenue Act of 1932 are constitutional or are applicable in determining the amount of the residuary bequests, legacies and devises deductible under Section 303 (a) (3) of the Revenue Act of 1926, as amended, the Commissioner erroneously and excessively determined the Federal estate tax liability in this case because of his use of an algebraic formula in computing the amount of the Federal estate tax to be used in reducing the residuary estate deductible for charitable bequests, legacies and devises. The estate tax imposed is not required or permitted to be calculated by the use of an algebraic formula. Not only is the use of an algebraic formula plainly without the language of the statute and the intendment of the Congress, and required by numerous court decisions to be avoided, if possible, and not only is a simple computation, which the ordinary man can understand, required, but that method of computation of the tax is to be preferred which, in addition to avoiding an algebraic computation, also aids charities. Instead of first reducing the residuary estate which otherwise would be deductible as bequests, legacies and devises to charity by the amount of the total eventual Federal estate tax as ascertained by an algebraic formula, one simple, arithmetical, tentative computation of the total Federal estate tax under the 1926 and 1932 Acts should be made on the basis of considering all of the residuary estate (unreduced by any estate tax) as deductible on account of its

being bequeathed and devised to charitable organizations. After determining such tentative tax, the said residuary estate should be reduced by the amount of such tentative tax, and the balance should be used as the amount of the residuary estate deductible for charitable bequests and
33 devises in the next and final computation of the Federal estate tax.

The claimants request that prompt consideration of this claim be given by the Commissioner in order that if the same shall be denied they may be able promptly to institute suit to recover with the view of winding up the decedent's estate at the earliest possible moment and affording the charities entitled to the residuary estate of the decedent an opportunity to receive their full bequests, legacies and devises as soon as may be possible.

It is requested that notice of action upon this claim be given the attorneys for the claimants, Messrs. Judah, Reichmann, Trumbull, Cox & Stern, 134 South LaSalle Street, Chicago, Illinois, and Messrs. Weill, Satterlee, Green & Morris, 837 Munsey Building, Washington, D. C.

34 And on, to wit, the 27th day of February, 1939, came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Answer in words and figures following, to wit: Filed Feb. 27 1939.

35 In the District Court of the United States.

* * (Caption—47259) * *

ANSWER.

Now comes the defendant above named by Michael L. Igoe, United States Attorney for the Northern District of Illinois, Eastern Division, and David L. Bazelon, Assistant United States Attorney for said District, his attorneys, and for answer to the allegations of plaintiffs' complaint admits, denies and alleges as follows:

(1) The allegations of paragraph 1 of plaintiffs' complaint are admitted.

(2) The allegations of paragraph 2 of plaintiffs' complaint are admitted.

(3) The allegations of paragraph 3 of plaintiffs' complaint are admitted.

(4) Defendant denies the allegations set forth in paragraph 4 of the complaint, except the allegations set forth in the first sentence thereof, which are admitted.

Further answering the allegations set forth in paragraph 4 of the complaint defendant avers that under
36 the Laws of the State of Illinois certain paramount claims, including funeral expenses, ordinary administration expenses, and debts and claims, in the sum of $290,060.44, together with Federal estate taxes amounting to the sum of $459,879.57, or a total of $749,940.01, were chargeable against, and a prior lien upon, decedent's entire estate. Defendant avers that the residue of decedent's estate after payment of these paramount charges, and payments made pursuant to specific directions in decedent's will aggregating $3,485,642.45, amounted to the sum of $3,223.51, and no more, and this, defendant avers, was the amount of decedent's residuary estate bequeathed and devised by decedent to the charitable organizations named in his will, within the meaning of Section 303 (a) (3) of the Revenue Act of 1926, as amended.

(5) Defendant denies the allegations set forth in paragraph 5 of the complaint, except the allegations that decedent's will contained no provision regarding the payment of the Federal Estate Tax or Illinois Inheritance Taxes, except a direction in Article Fourth of said will that all inheritance, legacy, succession and estate taxes, both State and Federal, on all the specific gifts and bequests contained in Articles Third and Fourth of his said will should be paid by his executors out of his general estate, and that by the Laws of Illinois the Federal Estate Tax is, and was payable out of the general or gross estate of the decedent as an expense of administration.

Further answering the allegations of paragraph 5 of the complaint, defendant avers that the payment by plaintiffs out of decedent's general estate of the Federal estate tax imposed by the Revenue Acts of 1926 and 1932, as amended, reduced to $3,223.51 decedent's residuary estate bequeathed and devised by him to the charitable organizations named in his will.

(6) Defendant admits the allegations set forth in paragraph 6 of the complaint, except the allegations made in the last three clauses thereof, which defendant denies.
37 Defendant, further answering the allegations set forth in paragraph 6 of the complaint, avers that specific bequests, legacies and devises to charitable organiza-

tions within the meaning of Section 303 (a) (3) of the Revenue Act of 1926, as amended, exceeded $1,570,696.74, and alleges that the deduction on account of such bequests was reduced by the incidence of State death taxes, leaving as the amount properly deductible on account thereof said sum of $1,570,696.74.

Defendant, further answering the allegations set forth in paragraph 6 of the complaint, avers that the Federal estate tax paid by plaintiffs to this defendant was and is a paramount charge against the estate of the decedent and was required to be paid before there could be any net residuary estate, and defendant avers that decedent's net residuary estate, within the meaning of Section 303 (a) (3) of the Revenue Act of 1926, as amended, did not exceed $3,223.51, the amount determined and found by the Commissioner of Internal Revenue.

(7) Defendant denies the allegations set forth in paragraph 7 of the complaint, except the allegations that the Commissioner calculated that the total amount of the Federal estate tax, on the basis of allowing as a deduction for residuary bequests to charitable organizations only the amount of $3,223.51, would be $459,879.57, which is admitted, defendant further admitting that the Commissioner allowed $3,223.51 as a deduction for charitable bequests and devises under the residuary clause of decedent's will. Defendant further avers that the Commissioner computed the above tax by means of arithmetic and denies that an algebraic formula was used.

(8) The allegations of paragraph 8 of plaintiffs' complaint are admitted.

(9) The allegations of paragraph 9 of plaintiffs' complaint are admitted.

(10) The allegations of paragraph 10 of plaintiffs' complaint are admitted.

38 (11) The allegations of paragraph 11 of plaintiffs' complaint are denied.

(12) Defendant denies the allegations set forth in paragraph 12 of the complaint.

Further answering the allegations of paragraph 12 of the complaint, defendant avers that the Commissioner of Internal Revenue, in his determination of the estate tax liability of the estate of decedent in the sum of $459,879.57, and the deduction for residuary bequests to charitable organizations in the sum of $3,223.51, relied upon the provi-

sions of Section 303 (a) (3) of the Revenue Act of 1926, as amended by Section 807 of the Revenue Act of 1932.

(13) Defendant denies the allegations set forth in paragraph 13 of the complaint except the allegation that payment and refund of the amounts therein sought to be recovered have been demanded by plaintiffs, which is admitted.

Further answering the allegations of paragraph 13, defendant denies that he is indebted to plaintiffs in the sum of $119,069.43, or in any sum whatsoever, and avers on the contrary that such sum was lawfully assessed and by him legally collected as Collector of Internal Revenue.

(14) Further answering the complaint, defendant denies each and every the allegations therein contained not hereinbefore specifically admitted to be true.

Wherefore, defendant prays for judgment against plaintiffs, dismissing the complaint at plaintiffs' costs.

William J. Campbell,
United States Attorney,
David L. Barzelon,
Assistant United States Attorney,
Attorneys for Defendant,
826 United States Court House,
Chicago, Illinois.

39 State of Illinois, } ss.
County of Cook. }

David L. Bazelon, being first duly sworn, on oath deposes and says that he is one of the duly appointed and qualified Assistant United States Attorneys for the Northern District of Illinois, and that in such capacity he is one of the duly authorized representatives of the defendant herein; that he is one of the persons whose name is subscribed to the foregoing Answer; that he is familiar with the contents of said Answer, and that the matters and things therein contained are true to his best knowledge and belief.

David L. Bazelon.

Subscribed and sworn to before me this 17th day of February 1939.

Charles A. Sistek,
Notary Public.

(Seal)

40 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—47259) * *

John Dziedzig, being first duly sworn, on oath deposes and says that he is employed as Clerk in the Office of the United States Attorney at Chicago, Illinois; that on the 27th day of February, 1939, he placed a copy of the foregoing Answer in Government franked envelope addressed to the following:

Messrs. Pam, Hurd & Reichman,
231 S. LaSalle St.,
Chicago, Illinois,

and that he placed said envelope so addressed and containing said copy of the foregoing Answer in the United States Mail Chute located in the United States Courthouse, Chicago, Illinois, on said date.

John Dziedzic.

Subscribed and sworn to before me this 27th day of February, 1939.

Charles A. Sistek,
(Seal) *Notary Public.*

41 And on, to wit, the 17th day of April, 1939, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Reply in words and figures following, to wit: Filed Apr. 17, 1939.

42 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—47259) * *

REPLY.

Now come the plaintiffs, The Northern Trust Company and Mary E. Kaufman, as Executors under the Last Will and Testament of Henry M. Wolf, by Pam, Hurd & Reichmann, their attorneys, and for reply to the allegations of the defendant's answer say:

(1) Replying to paragraph 4 of the defendant's answer, plaintiffs deny that Federal Estate tax amounting to the sum of $459,879.57 was chargeable against and a prior lien upon decedent's estate. Plaintiffs aver that the Federal

Estate tax which was chargeable against and a prior lien upon decedent's estate is the correct Federal Estate tax which should have been determined by the Commissioner of Internal Revenue of the United States and assessed in the amount of $342,744.60.

43 Further replying to paragraph 4 of defendant's answer, plaintiffs deny that the residue of decedent's estate, after payment of paramount charges and payments made pursuant to specific directions in decedent's Will, amounted to the sum of $3,223.51 and no more, and plaintiffs aver that the sum of $463,103.08 was the amount of decedent's residuary estate bequeathed and devised by decedent to the charitable organizations named in his Will within the meaning of Section 303(a)(3) of the Revenue Act of 1926 as amended.

(2) Replying to paragraph 5 of defendant's answer, plaintiffs deny that the payment by plaintiffs out of decedent's general estate of the Federal Estate tax must, by the Revenue Acts of 1926 and 1932 as amended, reduce to $3,223.51 decedent's residuary estate bequeathed and devised by him to the charitable organizations named in his Will.

Plaintiffs aver that the payment by plaintiffs out of decedent's general estate of the correct and proper Federal Estate tax imposed by the Revenue Acts of 1926 and 1932 as amended, left a residuary estate amounting to $463,103.08, which was bequeathed and devised by decedent to the charitable organizations named in his Will.

(3) Replying to paragraph 6 of defendant's answer, plaintiffs aver that the amount of Federal Estate tax which was and is a paramount charge against the estate of the decedent, and which was required to be paid before

44 there could be any residuary estate, was not the amount of $459,879.57 actually paid by the plaintiffs to the defendant, but was the amount of $342,744.60, which is the proper and correct Federal Estate tax which should have been assessed against the estate of the decedent and paid by the plaintiffs, and that plaintiffs have overpaid the difference between said amounts, that is to say, the sum of $117,134.97, and $1934.46 interest.

Further replying to paragraph 6 of defendant's answer, plaintiffs aver that the use by the defendant of the term "net residuary estate" in said paragraph 6 of his answer is without legal meaning or significance, since under the laws of the State of Illinois the estate of the decedent

which remained after payment of the Federal Estate tax and other paramount charges and liens out of the general estate of decedent, is and constitutes the residuary estate of decedent.

Plaintiffs therefore deny that there existed a "net residuary estate" in the amount of $3,223.51, or in any other amount, within the meaning of Section 303(a)(3) of the Revenue Act of 1926 as amended.

Further replying to the allegations of paragraph 6 of defendant's answer, plaintiffs aver that the decedent's residuary estate under the laws of Illinois, within the meaning of Section 303(a)(3) of the Revenue Act of 1926 as amended, did exceed the sum of $3,223.51, and amounted to $463,103.08.

45 (4) Replying to paragraph 7 of defendant's answer, plaintiffs aver that in the computation of the Federal Estate tax by the Commissioner of Internal Revenue on the basis of allowing as residuary bequests to charitable organizations only the amount of $3,223.51; resulting in a tax of $459,879.57, the Commissioner of Internal Revenue was compelled to ascertain the amount of the allowable charitable deductions in order to compute the correct Federal Estate tax and simultaneously was required to determine the correct Federal Estate tax in order to ascertain the allowable charitable deductions; that this problem involving two indeterminate unknown factors mutually dependent can only be accurately solved by means of algebra, or an algebraic formula, or some other form of higher mathematics, and not by any process of simple arithmetic within the cognizance and understanding of the ordinary taxpayer; that if the Commissioner of Internal Revenue denies that an algebraic formula is required and denies that he used an algebraic formula in the computation of the tax assessed herein, and if the Commissioner of Internal Revenue claims to be able to determine and to have determined an accurate Federal Estate tax, assessed herein, by arithmetical computation, he was compelled to use an arithmetical computation so cumbersome and complicated as to be beyond the comprehension of the ordinary taxpayer, and its use by the Commissioner of Internal Revenue is therefore as unreasonable, capricious and arbitrary as would have been the use of an algebraic for-

46 mula, and subject to all of the same constitutional and other objections urged against the use of an algebraic formula set forth in the complaint herein.

Further replying to the defendant's answer, plaintiffs deny all of the affirmative allegations of the defendant's answer not hereinabove admitted or denied.

Wherefore, the plaintiffs pray judgment against the defendant as in their complaint stated.

Pam, Hurd & Reichmann,
Attorneys for plaintiffs, The Northern Trust Company and Mary E. Kaufman, Executors under the Last Will and testament of Henry M. Wolf, deceased.

47 And on, to wit, the 18th day of April, 1941, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Transcript of Testimony in words and figures following, to wit:

49 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47259) * *

Report of Proceedings at the hearing of the above entitled case before the Honorable Charles E. Woodward, one of the Judges of said Court, commencing on the 18th day of December, A. D. 1940, at the hour of 10:00 o'clock A. M.

Present:

Messrs. Pam, Hurd & Reichmann.
By Mr. A. F. Reichmann and Mr. Myron D. Davis, appeared for plaintiffs.

Mr. J. Albert Woll, United States District Attorney.
By Mr. Paul Ziffren and Mr. D. H. Horton, appeared for defendant.

50 The Court: You may proceed.

Mr. Reichmann: If your Honor please, I am glad to say that the facts have been stipulated in this case so that there won't be any extended hearing of testimony, possibly one or two or three witnesses, that is all.

Now I think possibly before proceeding, however, I should make a somewhat brief and concise opening statement of just what this case is about.

The Court: I would appreciate it if you would.

Mr. Reichmann: This is an action brought by the executors of the last will and testament of Henry M. Wolf, deceased, to recover an alleged over-payment of Federal Estate Tax in the amount of $119,069.43, with interest thereon from date of payment.

Now, it is stipulated that if plaintiffs prevail in their contentions in this case that we are entitled to that recovery.

In due course I will read that stipulation into evidence, and I think that it is quite important that I should read it so that your Honor may get the facts as we proceed.

Now Mr. Wolf's will disposed of Wolf's estate, and I will give you all of those figures in due course in the
51 briefs we will submit, so it won't be necessary for you to burden yourself in taking it down.

Now, the gross estate, $4,238,805.97 is disposed of as follows: Debts and administration expenses $283,810.44. Specific pecuniary legacies for non-charitable purposes, in other words, net taxable estate of $1,921,195.71, before any specific credit under the Revenue Acts of 1926 and 1932.

Then the specific pecuniary legacy for charitable purposes of $1,570,696.74.

Thus there is no controversy about any of these figures.

Then the residue of the estate he bequeathed to four designated charities, the Michael Reese Hospital, the University of Chicago, and two others. A total residue of $463,103.08. That disposed of the entire estate.

Now the contention of plaintiffs in this case is that under the Federal Estate Tax Law the Government imposed a grossly excessive tax upon this estate which was paid by the executors under protest, their theory being that it would be better to pay and not pay interest at six per cent running against any deficiency and then sue for refund and get the benefit of the six per cent interest. They did this
in view of the charitable bequest to which the Will
52 relates.

I will not undertake to give you the details at this moment, but our contention is that the utmost of tax assessable against this estate under our interpretation of the Federal Estate Tax Law is $42,744.60, and that amount paid out of the general or body of the estate of Mr. Wolf left a residue which was disposed of by his will of $120,358.48.

Now on the other hand, the Government, or Internal Revenue Commissioner proceeded on a totally different

theory, and he assessed the tax of $459,879.57, and which left only $3,223.51, as a residue to charity. In other words he took from some $120,000., in round numbers, devised to charities as a residue, approximately $117,000.

Now the point of departure in this case between the Commissioner and the plaintiffs lies in the interpretation of Section 807 of the Federal Estate Tax Law to which I will presently advert.

The plaintiffs' contention is that we do not come within the terminology of Section 807, but that we are governed entirely by the general provision for the deduction of bequests to charities in determining the net estate under
53 section 303 of the Act of 1926, and which has continued in force ever since.

Now I just want to call your Honor's attention to the language of Section 303.

For the purpose of the tax the value of the net estate shall be determined—

a) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate the amount of all bequests, legacies, devises or transfer,—without reading fully—to charities. In other words they are defined.

Now this Provision of the Revenue Act of 1926 was in force from 1918 when it was first enacted and has continued to be in force, except as amended by Section 807 and various other amendments that are not material to this case, to the present time. And at the time of Mr. Wolf's death Section 807 was in force as an amendment to Section 303.

Now it will be noted as we contend that under Section 303, which alone applies, as I shall endeavor to show your Honor, that all charitable bequests without any reduction both specific and residuary are deducted from the gross estate in arriving at the net taxable estate.

54 We will call your attention when we come to filing our brief to what we will contend is the controlling case, and that is the case of Edwards versus Slocum, reported in 264 U. S., affirming the Circuit Court of Appeals of the United States in 287 Fed.

Now following the decision of the Slocum case to which I will advert presently, Congress amended Section 303, in the following respect, as Section 807.

The Court: That is, what is now Section 807 was added to 303?

Mr. Reichmann: Was incorporated in the body of 303 by an amendment, yes, your Honor, that was after the decision of the Slocum case.

The Court: And that was before the death of the decedent?

Mr. Reichmann: Yes. Before the death of Mr. Wolf. So that amendment is in the body of the law, but not applicable to this estate; it is in force. We say it is not applicable because we don't come within its terminology. That language is as follows: (reading)

55 Under this paragraph then the amount of the charitable bequests deducted shall be the amount of such bequests, legacies, and devises reduced by the amount of such taxes.

This amendment was repealed in 1926, and reenacted, however, in 1932, and is still continued in force.

Now in order to get our contention clearly before your Honor, I think I must advert somewhat to the language of this amendment and to indicate to your Honor that we do not come within its terminology. Your Honor will observe that the Act provides—the amendment provides that if the tax imposed by Section 301, which is the section that imposes a Federal Estate Tax, is either by the terms of the will, or by the laws of the jurisdiction under which the estate is administered.

Then it goes on—payable in whole or in part out of the bequests to charities, then the charitable deduction shall be reduced by the amount of the tax.

Now the will made no provision whatever with reference to the payment of these taxes. It made provisions

56 in certain specific instances, but it is conceded that there was no provision in the will that affects this case in any way, shape, or form.

Then the next provision is that if by the law of the jurisdiction under which the estate is administered the federal estate tax is payable in whole or in part out of the bequests or legacies, to the charities then again the amount deductible under this paragraph, that is, the amount to the charities, shall be reduced by the amount of the taxes, Federal Estate Taxes imposed.

Your Honor will observe that the language is clear and specific and is to the effect that if by the will or by the law of the jurisdiction under which the estate is administered the Federal Estate Tax is payable in whole or in part out of the bequests to charities, then, under those circum-

stances, the bequests to charities that are deductible shall be reduced by the amount of such taxes.

Now, I don't think that it will be controverted, at least we have not heard of any controversy up to this time, that under the Law of Illinois, the Federal Estate Tax is not payable out of the bequests to charities. On the con-
57 trary, under the Law of Illinois, the Federal Estate Tax is payable out of the body or gross estate as an expense of administration and not otherwise.

Therefore, we contend that we do not come within the terminology of this statute, and that the theory of the Commissioner of Internal Revenue—to reduce the bequests to charities professedly, under Section 807, by the amount of the Federal Estate Tax was entirely without the statute and unwarranted.

Now what he did was this. He took, and, as we will show and claim, arbitrarily a method of calculation and he derived a Federal Estate Tax of $459,000. in round numbers, and this amount he deducted from the amount or the bequests to charities, and conversely, having done that, reduced the amount deductible on account of the bequests to charities, he increased the taxable estate, in that amount above what we contend it really was; in violation, we insist, of the very clear language and intendment of this statute. And when he did that he put the estate in the higher brackets so far as the rate of taxes is concerned, and instead of leaving a residue in the estate going to charity of $120,000., in round numbers, he left only
58 $3000., or three thousand and some odd dollars, going to charity.

Now, I wish to call the Court's attention in support of our contention that a wrong construction was put upon Section 807 by the Commissioner of Internal Revenue, to certain well settled principles and I advert to that in support of my further statement of facts with reference to the case of Edwards versus Slocum. Your Honor, of course, needs no citation of authorities in support of the proposition, first, that all tax statutes are to be strictly construed in favor of the tax payer. Another proposition is well settled—and there could be no controversy about it—that a liberal construction is always made of a statute favoring bequests to charities. In other words, charities are favored and a liberal construction is made in their favor.

And then another proposition equally settled is that the

courts look askance upon any statute that seeks to impose a tax upon a tax, which, is what we say, and I don't think it will be denied, has been done by the Commissioner of Internal Revenue in this case, and he did that by figuring the tax and then adding that tax on to the net estate
59 and then calculating a tax upon that total or aggregate of those two amounts.

Then there is another proposition that is settled, not only in the Edwards versus Slocum case, but in various other cases, which we will in due time call the Court's attention to in our briefs, that a construction should be adopted in all instances that avoids the imposition of taxes, by resorting to algebraic and complicated methods of calculation, and that applies in this case, as the case of Edwards versus Slocum clearly disclosed.

In Edwards versus Slocum the Commissioner of Internal Revenue did exactly what he has sought to do in this case. But at that time Section 807 was not in existence and the Supreme Court of the United States held that the Commissioner had no right to deduct from the charitable bequests the amount of the Federal Estate Tax; he had calculated or conversely added the amount of the Federal Estate Tax to the otherwise net estate and then calculated the Federal Estate Tax upon that aggregate total.

Now, we shall urge upon your Honor, that if our construction of Section 807 is sustained and sound then
60 this case is controlled and determined by the decision of the Supreme Court in Edwards versus Slocum.

Now we say that the Commissioner in imposing the tax that he imposed here utterly ignored a very defined and well settled limitation prescribed in Section 807 in that neither the will nor the law of administration, which is the Law of Illinois, provided for the payment of the Federal Estate Tax out of bequests to charities, but on the contrary specifically provided in unambiguous language that, we submit, cannot be mistaken, that the Federal Estate Tax must be paid as an expense of administration out of the body or gross estate, the same as any other expense of administration, as the authorities that we will cite to your Honor, I think, clearly and conclusively show.

Now, we will call your Honor's attention in due course, and in this connection I think I should advert to the fact that the Federal Estate Tax Law clearly and unmistakably provides how the net estate to be taxed is to be arrived at. I want first to resort to the history of this tax legisla-

tion. As Justice Holmes stated in one case, "A page of history is worth a volume of logic."

61 Now, the first Federal Estate Tax law was passed in 1916 and from its inception has specified, specifically and unequivocally, how the net estate shall be arrived at. Thus in Section 300 of the Law of 1926, still in force, there is what is designated a definition of the net taxable estate.

"The term net taxable estate means the estate as determined under the provisions in Section 303."

Then Section 300 prescribes the tax to be imposed upon the net estate and sets forth in detail the percentages imposed.

Then 302 defines the value of the gross estate, how that is to be arrived at.

And finally we come to 303 and this is the language:

"For the purpose of the tax the value of the net estate shall be determined—

"(a) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate—

"(1) Such amounts for funeral expenses, (b) for administration expenses, (c) claims against the estate,

62 (d) for unpaid mortgages," and so forth; I wouldn't read it in detail.

"(e) And such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent,"—and so forth.

Now, as I said, that continued to be the provision of the Federal Estate Tax Law in determining how you shall arrive at the net taxable estate by setting out specifically what deductions shall be made from the gross estate and that was the condition of the law, as I indicated before, at the time of the decision of the case of Edwards versus Slocum. After that time—after the original Act, or Section 303 was passed in 1916 there was an amendment to Section 303 which added another element of deduction that had not been there before, and that language is:

"That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a citizen or resident of the United States by deduction from the value of the gross estate"—and then enumerating them, and then adding the pro-

63 vision I have read to your Honor, the amount of all bequests and devises to charity and so on, and that was the first time, in 1918, that that added deduction was put

into the Act for the purpose of deducting it from the gross estate in order to ascertain the net taxable estate.

Then, as I indicated to your Honor before, in 1924, this Section 807 was enacted as an amendment to Section 303, designed to provide for a reduction of the charitable deductions otherwise obtained in certain limited cases only, none of which we say do we come under.

Now, we will show, if your Honor please that in figuring this tax of $342,000 that we say is the only justifiable tax that can be imposed upon this estate, we follow exactly the method prescribed in Edwards versus Slocum. There is a note attached to the Circuit Court of Appeals' decision in Edwards versus Slocum which sets out just exactly what the condition of that estate was and it is exactly the condition of the Wolf Estate. They deducted from the gross estate the debts, administration expenses, and the specific bequests to charities and then also the aggregate net residue devised to charities, without taking into considera-
64 tion or deducting from the residuary charitable bequests the amount of the Federal Estate Tax, and we, as I say, as we will show, in arriving at what we charge is the correct tax in this estate, have followed exactly the language and the method prescribed in the Slocum case.

Now, the only question therefore that remains is whether or not Section 807 has changed the law to the extent of making the decision of Edwards versus Slocum inapplicable. We say that Section 807 is not applicable to this estate and therefore the law that obtains is as laid down in Edwards versus Slocum, and if that be so, then we are entitled to recover in this case the amount agreed upon $119,000 and some odd dollars, with interest.

Of course, if on the other hand, it should be held that Section 807 is subject to the construction put upon it by the Commissioner of Internal Revenue, then the law laid down in Edwards versus Slocum does not apply. Our effort in this case will be to demonstrate to your Honor by argument and the abundant citation of authorities that we do not come within the scope of Section 807, and that this case is to be determined conclusively by the still prevailing law laid down in Edwards versus Slocum.

65 Now I come to some other propositions that were laid down in Edwards versus Slocum which should be adverted to in this connection.

Edwards versus Slocum decided that the action of the Commissioner of Internal Revenue was erroneous on var-

ious grounds, and among others, that the Government's theory, it was held, in seeking to impose a tax upon a tax or to deduct from the amount going to charity the amount of the Federal Estate Tax departed from the long established practice of the law of never regarding the incidence of a tax in the levying of a tax. In other words, it was established law that the incidence of the tax in the levying of a tax should not be resorted to. Secondly, it was laid down in that case that a tax upon a tax is not favored and is contrary to the established principles and usages of the courts of the United States. Third, it was pointed out that in the imposition of a tax by the Commissioner of Internal Revenue in the Slocum case the problem to be solved involved, or was raised by two mutually dependent indeterminates and required resort to algebraic formula, and they held that algebraic formulae are not lightly to be imputed to legislators.

66 And then it also found that the action of the Commissioner of Internal Revenue in imposing this tax upon a tax and in reducing the amount that otherwise would go to charity to the extent and the amount of the tax ran contrary to the expressed intent of the statute and of Congress to encourage a charitable bequest.

And in this instance, as I pointed out to your Hónor, speaking in round figures, the Government by its action took $120,000 of money that otherwise would have gone to charity and will go to charity if our contention prevails, and reduced that amount to approximately $3,000.

Now there was, we contend, a very clear intimation in Edwards versus Slocum that on these various grounds it was questionable whether a statute either designed to accomplish that purpose or a construction of a statute to accomplish that purpose could be Constitutionally imposed. Therefore we are urging in this case the following contentions:

Our first contention is that the provisions of Section 807 of the Revenue Act of 1932 are not applicable to this

67 estate because, under the Law of the State of Illinois, the jurisdiction under which the estate is administered, the Federal Estate Tax is not payable in whole or in part out of the residuary estate devised and bequeathed to charity, but that on the contrary, the Federal Estate Tax is an administrative expense required to be paid by the executors out of the body or general or gross estate of the decedent. So that until the Federal Estate

Tax was paid no residue could come into being or exist out of which the Federal Tax could be payable in whole or in part.

Our second contention is that if plaintiffs' construction of Section 807 be sustained, then 807 is not applicable and the decision in the case of Edwards versus Slocum controls and is conclusive of plaintiffs' right to recover as prayed in this case.

Third, if Section 807 of the Revenue Act of 1932 applies in the case at bar and requires the charitable deduction to be reduced by the amount of Federal Estate Tax and the amount of the tax added to the net taxable estate then said section in fact imposes a tax upon a tax or measures the amount of the tax by the tax itself, which is such a capricious, arbitrary and unreasonable method of taxation as to deprive the taxpayer of his property without due process of law within the meaning of the Fifth Amend-
68 ment to the Constitution of the United States.

Fourth, that the method adopted by the Internal Revenue Commissioner in his construction and application of Section 807 makes it necessary to ascertain the amount of the allowable charitable deductions in order to compute the Federal Estate Tax and simultaneously to determine the Federal Estate Tax to ascertain the allowable charitable deductions. That this problem involves two indeterminate, unknown factors, which could be solved only by means of algebra or algebraic formula, or some form of higher mathematics, but could not be solved by any process of simple arithmetic. And the use of any such formula by the Commissioner is also unreasonable, capricious, and arbitrary, and a denial of due process of law, within the meaning of the Fifth Amendment to the Constitution of the United States.

In short, so far as that last proposition is concerned, we contend that it cannot be within the contemplation of our Constitution that a tax should be imposed in such a way that the average taxpayer cannot in the nature of things be held to have cognizance of it. And that when that is sought to be done it amounts to a capricious imposition that will not be sustained by the court.

69 Mr. Ziffren: Your Honor, I should like to present Mr. D. H. Horton, of the Department of Justice in Washington, to make the statement.

Mr. Horton: May it please the Court:

This case has been remarkable in the unity of the oppos-

ing counsel in presenting the case to your Honor, in such a way as to relieve you of as much of the burden as is possible in the case.

In other words, we have agreed so far as possible upon the stipulated facts in the case.

Mr. Reichmann has made such a thorough and painstaking explanation of the legal situation in the case which your Honor will have to apply to the facts, that it leaves very little for me to say, except to dwell, well particularly, upon the point of demarcation, the real controversy in the case.

He is correct in his statement that the Revenue Act of 1916 did not provide for a charity deduction. That appeared for the first time in the 1918 Act. It was that Act that was before the Supreme Court in Edwards versus Slocum. It was that Act which the Supreme Court construed in February of 1924. At that time Congress was considering the Revenue Act of 1924, and when the attention of the Senate was called to the decision of the
70 Supreme Court in Edwards versus Slocum they very promptly sought by legislation to overrule that decision. They cite Edwards versus Slocum in the committee reports, and point out that Section 807 when enacted in the 1924 Act was intended to limit the deduction for charitable bequests to the amount which charity actually received as a bequest.

In this case it is said that charitable bequest is the residuary estate before any tax is paid from the general estate. That the $463,000, in round numbers, and those are the figures in round numbers to which I will refer in my opening statement. Congress deliberately cites Edwards versus Slocum for the purpose of showing its intention to limit the deduction to the amount actually going to charity. And so we look to the intention of Congress in enacting that section in this case. Now, the residuary estate in this case is not $463,000 for the reasons stated by Mr. Reichmann. There was a Federal Estate Tax payable out of the general estate, and if you pay a Federal Estate Tax out of the general estate it necessarily reduces the residuary estate by the amount of the tax.

Then came the Revenue Act of 1926, which repealed as of its effective date, June 2, 1926, Section 807 as we
71 know it today. But in 1932, Congress amended that limitation which appeared in the Revenue Act of 1924 in the identical language, and now we contend the bequest to charity is the actual amount that goes to charity.

In this case it is conceded that there is a tax of $342,000 to be paid from the general estate and therefore under the plaintiffs' theory in this case $120,000 could by no possibility go to charity, but in arriving at the $342,000 they take a deduction for $463,000 from the gross estate, and I would very much like to point that out. Might I hand this up, the stipulation?

Mr. Ziffren: Certainly.

Mr. Horton: I am pointing out to your Honor that last paragraph of the stipulation on page ten.

"It is agreed and stipulated that the deduction in Federal Estate Taxes computed upon plaintiffs' said theory and construction of Section 807, aforesaid, is as follows:

"Gross estate ..... $4,238,805.97"

Now here is where our trouble begins in the next deduction. We deduct debts and charges of $283,810.44, as to which there is no dispute, and then we take charitable
72 deductions of what? The specific bequests to charity which are undisputed and which amount to $1,570,696.74.

The Court: Where do you get that?

Mr. Horton: We have to make a deduction there, you have to separate that item of $2,033,799.82—

The Court: Well, I see those figures.

Mr. Horton: Now those are made up of two figures. Let me go back. We take the charitable deductions amounting $2,033,799.82.

The Court: That is the gross amount that goes to charity under the residuary clause of the will?

Mr. Horton: Under their contention, yes.

The Court: Where do you get that?

Mr. Horton: It consists of $1,570,696.74, as the specific bequest to charity, as to which there is no dispute, a difference of $463,013.08, which is what they say the residuary estate left by the testator in this case.

Now, we have taken no taxes out of that deduction at all.

Then we come to the specific exemption of $100,000, and you have a total of $2,417,610.26, which leaves a so-called net estate of $1,821,195.71, but your Honor will notice
73 we have taken a charitable deduction of $463,103.08 out of that estate.

The Court: No, I didn't notice it. Where do you get it?

Mr. Horton: It is the sum of the two figures as though

there was a charitable deduction of $463,103.08 plus the specific bequest of $1,570,696.74.

The Court: I don't see anything here about four hundred and some thousand dollars.

Mr. Horton: If you take $1,570,696.74 from $2,033,799.82, the figures shown in the stipulation, the difference is $463,103.08, which is the so-called charitable deductions in this case. The residuary estate, in other words.

The Court: I see.

Mr. Horton: So, by that procedure, we get the net estate of $1,821,195.71. We know there is a tax that is going to be paid out of the general estate. In this case they say a tax of $342,744.60, we know that is going to be paid out of the general estate. Therefore he threw in $1,821,195.71, but that sum plus $342,744.60, and that brings us into another bracket. Do I make it clear?

The Court: No, you don't, but go ahead. I can hear it. I will lay these figures aside. Now you can talk.

Mr. Ziffren: Your Honor, maybe I can explain it.

Mr. Reichmann: I think I can.

Mr. Ziffren: May I take a crack at it first?

As Mr. Horton pointed out, in taking the deduction of $2,033,799.82 as a charitable deduction the executors of this estate were assuming facts. They were assuming first of all that the residuary estate here that would go to charity would amount to $463,000.

The Court: Where do you get that figure, that is what I can't see.

Mr. Ziffren: Let me put it this way. There are two types of charitable bequests here. There is a residuary bequest to charity, and there are specific bequests to charity.

The Court: All right. Now what items constitute what is known as charitable deductions?

Mr. Ziffren: The charity deductions are not broken up in that computation at all. We are going to break up the charitable deductions right now into the two categories. The first category, the specific bequests, those amount to $1,570,696.74. Those are specific bequests and there is no question about it at all.

Now, your Honor will notice that the figure of $1,570,696.74 of specific bequests excludes the figure that the executors include as charitable deductions by this amount of $463,000; in other words, the sum of $1,570,000

of specific bequests plus $463,000 equal that figure of $2,033,000.

The Court: Where do you get your $463,000?

Mr. Ziffren: Now, the $463,000 is what the plaintiffs say constitute the residuary estate that will go to charity.

The Court: Well, how do you get at that, how do you get that residuary estate?

Mr. Ziffren: The residuary estate they get at it in a way that I prefer to let them explain, because I—

Mr. Reichmann: It is very simple.

The Court: I suppose it is arrived at after you pay your debts and cost of administration and taxes.

Mr. Ziffren: No, no taxes. Now that is the crux of the whole case.

Mr. Horton: Your Honor has put his finger on it.

Mr. Reichmann: No, he has not put his finger on it at all.

The Court: Well, that is the way we use to figure it out.

76 Mr. Ziffren: May I continue, just a moment, Mr. Reichmann?

Mr. Reichmann: Certainly.

Mr. Ziffren: Now, if your Honor included what the executors in that computation there say is an aggregate net tax of $342,000, that is the tax they admit by their computation, instead of having the figure $463,000 to add to that million and a half dollars, you would only have a figure of about $120,000 to add to that million and a half dollars.

So that this $2,033,000 figure would be automatically reduced by $342,000, and that would naturally mean a higher net estate because it would reduce the charitable bequests by $342,000, therefore increasing the net estate to that amount, therefore increasing the tax itself by a proportionate amount. Now, that is what Mr. Horton had in mind when he spoke to your Honor about splitting up this figure of $2,000,000.

The Court: Now, we have charity bequests of $1,000,000.

Mr. Ziffren: One and a half million dollars, roughly.

77 The Court: Then the residuary estate, there are other charities?

Mr. Ziffren: The residuary also goes to charity, then the question is what?

The Court: How do you get the residuary estate?

Mr. Ziffren: Yes.

The Court: You get your residuary after you pay your debts and charges and your specific bequests.

Mr. Ziffren: Obviously, and as I think Mr. Horton pointed out before, to get the residuary estate to go to charity you have to pay taxes.

The Court: Sure.

Mr. Ziffren: And by that very fact this charitable deduction here is an over-statement of at least, under their own admission, $342,000.

Mr. Horton: I am sorry if I couldn't make it clear.

The Court: I am not blaming you, I am blaming my own self.

Mr. Horton: No, I don't think it is yourself.

The Court: These computations of taxes are so complicated I just have to sit down by the hour to try to get what you mean.

Mr. Ziffren: If you look at this first full paragraph there, if you will read that, you will see where you
78 get that residuary estate, so-called, in this estate.

The Court: Now the $119,000 comes out of the $463,000, is that right?

Mr. Horton: Yes. The $119,000 comes out of that. In other words, may it please the Court, they are asking for a deduction of $463,000 when they admit themselves that the amount going to charity is $119,000, as your Honor said, or $120,000, therefore, the tax has got to come out of that proposition and you have a net estate by reason of that of $342,000, being improperly included and that exceeds $1,871,000. Now you are going to tax the net estate after you have taken out the allowable deductions from the gross estate.

The Court: Now this is figured in, according to that case you referred to, Edwards versus Slocum, your figures there?

Mr. Horton: Are those figures as against Slocum, the $342,000?

Mr. Reichmann: Yes. Now in Edwards versus Slocum they make exactly the same argument they are making here now.

The Court: Now, wouldn't you pay the taxes out of the corpus of your estate?

79 Mr. Reichmann: Yes, your Honor.

Mr. Horton: If you find out—

Mr. Reichmann: If you find out? No difficulty at all. You get involved into difficulty when you drag in 807.

Mr. Horton: 807 has to be enacted because Congress has adopted it.

The Court: Have you a copy of that here?

Mr. Ziffren: I think you will find it in this stipulation, your Honor, is set out—your Honor, it is set out on Exhibit D, page 4, at the bottom of the page. Page 4 of Exhibit D, it is a photostat, at the bottom of the page.

I could read it, it is very simple and I think Mr. Davis has it there.

Mr. Davis: You can see it right here (indicating). There it is.

The Court: (Reading silently.)

Mr. Reichmann: May I hand this up? I just handed counsel a copy; I think this will show as to how you reach that $463,000, if I may comment on it. At the top you will notice that $4,238,805.97, the gross total estate. Now you have your funeral expenses. You have your funeral expenses, your attorney fees—

80 The Court: How do the funeral expenses make a part of the gross estate?

Mr. Horton: That is for the purpose of arriving, if your Honor please, at what the residue for charity—$463,000 left for charity, that is the residuary.

The Court: How do you start out with the gross estate? There is no difficulty of figuring generally on that?

Mr. Horton: No.

The Court: All right. I am not worrying about that. You do not pay any taxes yet.

Mr. Reichmann: That is true. But the answer to that proposition is very simple. After all, we are construing a statute here and we are construing the law and the contention that is being urged here is exactly the contention that was urged by the Commissioner of Internal Revenue in the Slocum case, and yet it was held in the Slocum case that there was no basis for that contention. The only question that arises here is whether 807 has changed the law. We contend it has not changed the law.

Mr. Ziffren: Mr. Reichmann is correct when he

81 says this is the situation that confronted Congress after the Slocum case, the situation whereby his own computation shows there was a net of $1,821,195.71 before taxes, as the businessmen say; then they knew the minimum amount of taxes that they had to pay was $342,744.60, they knew they had to pay that much taxes. Knowing that the charities would never get this $342,000; and yet

they took a residuary reduction of $463,000, pretending that the charities would get that. When, as I say, they knew they would get at most about $125,000. And so Congress said when you do deduct charitable bequests you don't deduct the bequests before taxes; you deduct the bequests after taxes, and if you do deduct the bequests after taxes, as your Honor has indicated, this figure of $463,000 which is included in the figure of $2,033,000 is simply fiction.

So that the whole question is, do you deduct those taxes before you get the charitable bequests? Taxes that you know you have to pay.

The Court: Well, as a part of the gross estate, there is a residuary—whatever you call it—so your gross estate amounts to $4,000,000; now you have to make your reduction, there is no question about that.

82 Mr. Ziffren: No question about that.

The Court: No question about that.

Mr. Reichmann: That is right.

The Court: Specific exemption—

Mr. Ziffren: That, of course, is provided by statute, the 1926 exemption of $100,000. No question about any figure here. No question about the fact, before the payment of taxes.

The Court: Now, turn to Section 807, and see how it is applicable. Now the tax is imposed by Section 301.

Mr. Reichmann: Now, may I say, that under the Slocum case, where Section 807 was not in existence, it said under Section 301; in arriving at the net estate, and under Section 303, in arriving at the net estate, you take into consideration as deductions the specific bequests to charities as well as residuary bequests to charities, the whole business.

The Court: How does this change that?

Mr. Reichmann: It does not. In the Slocum case they took the entire amount of residue in the estate and added it to the specific charity bequests and deducted the total aggregate. Now they made the same argument that they make here, in that case, and it was not sustained. So

83 we see that in the Slocum case, assuming that case applies, we deduct not only the $1,570,000 specific bequests to charities but the entire residue that is left in the estate of $463,000. Only without reference to the imposition of any tax. That is exactly what was held in the Slocum case.

Mr. Horton: You are going to take a reduction when

you know $342,000 is the tax you have to pay, at least that much.

Mr. Reichmann: No, in the Slocum case it was held—it is true that the tax out of the body of the estate is going to reduce the amount going to charity, but that does not mean correlatively that the tax is assessable against that. We properly deduct the $463,000 plus the $1,570,000, unless, as I stated before, the language of Section 807 changes the situation. Now they say it does permit them to do what they are seeking to do here, and I say it does not, and that is the question.

Mr. Horton: May I say a word before your Honor's attention is taken from that proposition?

There is no question about Edwards versus Slocum here. If the situation here was as it was there, we wouldn't
84 be here, but in Section 807, Congress was considering the Edwards versus Slocum case and it was the legislature's position, and they were attempting to—

Mr. Reichmann: Well, the question is, did they do it.

Mr. Horton: They intended to.

Mr. Reichmann: Well, did they do it?

Mr. Horton: That is the question. That is the question his Honor is going to decide.

Mr. Reichmann: Not what it had in its mind doing.

Mr. Horton: Congress says you only have a deduction for actual charity, that that actually goes to charity.

Mr. Reichmann: I beg your pardon, it does not say that.

The Court: Now you claim here you have a gross estate of four million dollars and something.

Mr. Horton: No dispute about it.

The Court: Your deduction of debts is all right.

Mr. Horton: No dispute about that.

The Court: The deductions to specific charities.

Mr. Horton: No question about that.

The Court: Now you come to your residuary to charities.

Mr. Horton: And we say you can't deduct that
85 amount. You can deduct only the amount that actually goes to charity. You have to pay taxes.

Mr. Ziffren: Mr. Horton, in the language of Section 807, we say at that stage the amounf deductible under Section 303 shall be the amount of such bequests, reduced by the amount of taxes, that is exactly what we say in the language of Section 807 that the amount that is to be

deducted as to residuary charities shall be the amount of the residuary estate reduced by the amount of taxes.

Mr. Horton: By the true amount of taxes.

Mr. Ziffren: Yes, by the true amount of taxes; the deductions will be precisely what the charities actually get.

The Court: Don't they deduct the $463,000 before the payment of taxes, you leave that number three out.

Mr. Horton: Leave the three out to find out how much we are going to deduct for that charitable estate.

The Court: In other words, that will be added to your net estate?

Mr. Ziffren: That is right.

The Court: Then on your net estate—

86 Mr. Horton: It won't be $1,821,000 any more.

The Court: The tax provided in Section 301, and after they are out you will know how much goes to charity.

Mr. Ziffren: Yes, sir. What charity actually gets.

Mr. Horton: That is the very situation. Remember this is their computation they make. They say $342,000 now is the amount of the tax, but we challenge that.

The Court: How do they get that?

Mr. Ziffren: They use this $1,821,000, it includes taxes. We are going to increase that to over two million dollars because they have no right to the deduction which they took from the gross estate.

The Court: There are two Acts involved.

Mr. Ziffren: Yes, sir. Two Acts, and two different rates, and that is what complicates this matter so very much.

Now they say, using their assumed net estate of $1,821,000 that the Federal Tax on that is $342,000, $342,744, but we say when you throw this into the higher brackets your rate is changed. Now, we are in the two million dollar bracket and the rate changes, ten per cent under the

87 1926 Act, thirty-four per cent under the 1932 Act, and therefore, we have to have the real net estate upon which you are going to pay the tax. We don't know the real net estate and don't know the deduction for charity: we have to figure it out.

Mr. Reichmann: Your Honor, assuming we get the $342,000, that is on our theory of the case.

The Court: Under the two situations involved.

Mr. Reichmann: Yes. Now, the net under the law of 1926—

The Court: One exemption $100,000?

Mr. Reichmann: Yes. That is right. Assuming that to be net taxable estate, which we contend is right under 807, counsel won't controvert the fact, the fact that that produces the tax of $342,000—

Mr. Horton: Certainly, if your assumption is correct, you are going to have that amount; but the net estate we know because you have taken out the deduction of $342,000 from the gross estate that you were not entitled to.

The Court: Let me ask you this, assuming the Edwards versus Slocum case to be applicable, is this computation to be correct?

Mr. Horton: I wouldn't want to say whether it is or not under Edwards versus Slocum.

88 Mr. Reichmann: I have the case right here.

Mr. Horton: I don't want to bind myself to that. I am taking the net estate here and assuming the net estate the true net estate of $1,000,000, which I know is not the net estate.

The Court: No, that other computation.

Mr. Reichmann: Yes—because this is his computation or reduction. It is the theory—

Mr. Horton: It is not a theory. You owe taxes.

The Court: There is a controversy as to whether or not this is properly computed in accordance with the law, but he claims it is properly computed in accordance with a prior decision of the Supreme Court of the United States, known as Edwards versus Slocum. What is the computation in accordance with the theory of that case, and are the figures correct?

Mr. Horton: I rather suspect they are.

Mr. Reichmann: It is so stipulated.

Mr. Horton: I rather suspect they are.

The Court: Now that leads us up to the so-called Section 807.

Mr. Horton: Yes.

The Court: Now, what is the purpose—

Mr. Reichmann: Now, if your Honor please, in read-

89 ing that, if you will have in mind, I suggest, the other part of this Section 303. This is incorporated in the body of 303, and as I point out, Section 303 prescribes exactly how all bequests to charities, but does not make any difference whether specific or residuary, are to be deducted in arriving at the net taxable estate, but they say excepting in this particular instance. Now, the question is do we come within those exceptions.

The Court: Let us read it. Go ahead.

Mr. Horton: If the tax imposed here, Section 301, of any estate, succession, legacy or inheritance tax or either by the terms of the will—which is not so here—by the law of administration in which the estate if so administered—payable in whole or in part out of the bequests, legacies or devises otherwise deducted in this paragraph, then the amount deducted under this paragraph—

Now, may it please your Honor, $342,000 of taxes they admit were payable out of the general estate; if they are payable out of the general estate, how could you possibly have a residue of $463,000? You couldn't have it, because payment out of the general fund would reduce it and the residuary estate would—

90 Mr. Reichmann: There is the sophistry of it.

Mr. Horton: That is not sophistry.

Mr. Reichmann: What do you mean by the language "otherwise deducted under this paragraph"? In other words, leave out the exception and go to the body of Section 303. It says in accordance with the doctrine of the Slocum case, that the specific and the residuary devises to charity shall be deducted; that is what it says.

Mr. Ziffren: Let us assume for the purpose of this argument, the Slocum case would show you deduct the full amount of $463,000 as a residuary going to charity, then the question is what would you deduct in view of Section 807, and, it seems perfectly clear that under Section 807 you would deduct the amount deductible under this paragraph, $463,000 shall be the amount of such bequests, $463,000 reduced by the amount of taxes. Now the amount of taxes you admit is $342,000, so you would say after translating Section 807, deduct $120,000 at most.

Mr. Reichmann: Not at all.

Mr. Horton: Well, your Honor is aware by this time that we have a real law suit here.

The Court: No court has passed on it?

91 Mr. Horton: No, it has never been raised before.

Mr. Reichmann: You mean in court.

Mr. Horton: That is what I mean.

Mr. Ziffren: Because of the cooperation of the plaintiff and the willingness of the Government to have this question tested, we have tried to reduce everything down to the legal issue to the Court, and I think it is very well stated by Mr. Reichmann, but I think I can state it, if you wish. Whether or not you use as a charitable deduction

amounts which the charities will never get, but which are going into the United States Treasury,—

Mr. Horton: And where they are now, and never coming out—

Mr. Ziffren: If you would only deduct the amounts the charities got then Mr. Reichmann would not argue for a moment he is entitled to anything. If, on the other hand, you could deduct the amounts which the charities will never get, then it must be because Section 807 does not apply, and that, as Mr. Reichmann stated, is the real issue here.

Mr. Reichmann: That is it.

Mr. Ziffren: Now, Mr. Horton, has figured it out that
92 if the charities even got $120,000 in this case, they would be getting about two per cent of that money from Mr. Wolf and they would be getting ninety-eight per cent of that money from the Government, because the residuary estate after you pay taxes would be down to $3,000.

In other words, let me put it this way. If Mr. Wolf in his will had made a specific bequest to charity of $3,000, they would get $3,000, there would be a deduction of $3,000, and there would be no question about the case at all. Instead of that, by making the charities a residuary legacy, they are going to get $3,000 anyhow from the estate and he wants to give them about $120,000 out of the Treasury, which represents the amount that they would save by having charities the residuary legatees, instead of specific.

Mr. Reichmann: In all of your discussion you lose sight of a very deciding factor. I noticed Mr. Horton in reading this, while he says the law does not provide it—by the law under which the estate is administered—

Mr. Horton: Yes, but you pay taxes under it. But you can't pay them if you have or take $463,000 and give it to charity, you can't pay your tax then.

93 Mr. Reichmann: Yes, and under the law of the State of Illinois, the tax is not payable out of the charitable bequests; it is payable out of the body of the estate, and this says this shall apply only in the event that under the law of the State of Illinois the tax is paid out of the amount going to charity. Now, it does not provide any such thing. We will show your Honor under the law of Illinois.

The Court: You gentlemen agree to that as being the law of Illinois?

Mr. Horton: Yes. It is paramount it is an expense of administration and must be paid, but for the purpose of the Illinois Inheritance Tax.

Mr. Reichmann: We are not interested in that.

Mr. Horton: We are interested in that, we are talking about the Federal Tax we are dealing with here.

Mr. Reichmann: I beg your pardon, the State of Illinois has held that applies to the Federal Tax also.

The Court: It becomes a part of the expense of administration of the estate.

Mr. Reichmann: That is right.

Mr. Horton: Therefore comes out of the general
94 estate and you can't have a residue of $463,000 if it comes out of the estate.

Mr. Reichmann: Yes, you can.

Mr. Horton: No, because you take out the things that are not the charity bequest.

Mr. Reichmann: We will show you by an abundance of authorities that is where they have always been misled, because they say if the payment of the taxes reduces the amount that goes to charity then it is payable out of the residue which the Supreme Court of the United States in the Slocum case says is not true. It reduces the amount going to charity but it is not tantamount to saying it is paid out of the residue, it is paid out of the body of the estate.

Mr. Horton: Well, the question is what is the net estate in this case. They get a net estate of $120,000 by doing what? By taking from the gross estate the debts and charges and specific exemption and then the charitable exemption, which is not in dispute, $1,500,000 and on top of that $463,000.

Mr. Reichmann: That is right, which I say we are entitled to.

The Court: Now, if the Federal Estate Tax is a part of the debts and costs of administration why shouldn't you add that to the $283,000?

35 Mr. Ziffren: I think that is a very good question and that is exactly what the Government contends here.

Mr. Reichmann: You pursue the very course that was pursued in the Slocum case. The taxes in the Slocum case were identical with the case at bar. Mrs. Sage devised certain amounts to charity leaving a residue of a certain amount in the estate which was also bequeathed to charity. Then they deducted the amount of the debts, the specific devises to charity and the total residue from the gross estate and arrived at the net taxable estate, under the law,

as defined in Section 303. All right; and having got that net estate, the taxpayer computed the tax upon that net estate and then they came in and said that is all wrong, because that is not the residue. That is the gross residue and you are not entitled to any complete deduction because the Federal Estate Tax has to be paid and that reduced that residue, and the Supreme Court of the United States said that is not true.

Mr. Horton: And Congress said you did not give charity thirty-five million dollars, you gave them thirty-five million dollars less one million, three hundred and sixty-
96 three thousand dollars; we are going to change that.

The Court: I will read this over.

Mr. Horton: You have to take the Congressional history along with it.

The Court: (Reading silently.)

There is one thing, by the terms of the will would you say that is not applicable?

Mr. Horton: Under the will it is not provided.

The Court: By the law, the jurisdiction of the State in which the estate is administered.

Mr. Reichmann: That is not paid out of the amount devised to charity, because they concede it is paid out of the body of the estate as an expense of administration.

Mr. Horton: What effect does it have?

Mr. Reichmann: It may reduce the amount.

Mr. Horton: You are trying to get a reduction of $463,000.

Mr. Reichmann: Under the law of Illinois it is not payable out of the bequests to charity in any way, shape or form. It is paid out of the body of the estate and it is true it operates to reduce the residue to go to charity. The authorities are just as clear as they can be; when we
97 come to file our brief, we will cite them to your Honor.

The Court: Are devises otherwise deductible under this paragraph?

Mr. Horton: Of the bequests otherwise deductible.

Mr. Reichmann: That means otherwise deductible, but for this—

The Court: In other words, otherwise deductible, they come within one of these designated classes, is that your contention?

Mr. Horton: Yes.

The Court: Now, what does this mean?

Mr. Davis: That would refer to ancillary administration;

you might have an estate in Illinois that might also be administered in other States.

The Court: "Payable in whole or in part of devises otherwise deducted in this paragraph."

Mr. Reichmann: They are not payable out of the devise to charity, either specific or residuary; they are payable out of the body of the estate.

Mr. Ziffren: Of course, Mr. Reichmann, there is no question about the specific bequests, they can be ignored, but won't you agree, if the tax imposed by Section 301 is payable in whole or in part out of bequests by law of the jurisdiction under which the estate is administered,
98 then the amount deductible under this paragraph shall be the amount of the bequests reduced by the amount —if the tax imposed by Section 301 is payable in whole or in part out of the bequests of the estate administered.

Mr. Reichmann: Certainly. Then the amount deductible is the amount of the bequests reduced by the amount of taxes. That is all.

I will cite your Honor authorities, showing the tax is not payable out of the residue of the amount going to charity, but is paid out of the body of the estate and if it may operate to reduce the amount going to charity it could not be said to be a tax paid out of the residue bequeathed to charity.

Mr. Horton: Under Edwards versus Slocum, in the Circuit Court of Appeals it said the tax is paid out of the residue. We will cite many cases. You are bound to have this residue reduced by the payment of taxes. What would you pay it from?

Mr. Reichmann: Well, the Supreme Court differs with you.

Mr. Horton: Congress differs with the Supreme Court.

Mr. Reichmann: That is the question. Do they use language appropriate to that?

The Court: What is this 807 case in?

Mr. Horton: I claim this is to limit the deduction
99 to the amount which actually goes to charity.

The Court: Where do you base it?

Mr. Horton: On the Congression history.

Mr. Ziffren: And the face of the statute.

Mr. Horton: And from the face of the statute.

Mr. Ziffren: If the tax of $342,000 is payable in whole or in part out of the residuary bequests which are the only ones involved here, then the amount deductible under this

paragraph is the amount of such bequests, $463,000 reduced by the amount of taxes, reduced by $342,000. That seems perfectly clear.

Mr. Reichmann says, "Yes, we admit the tax is payable; that tax is going to reduce the residuary bequest." But he says there is a difference in paying it out of, and unless he can establish that proposition, of course, he realizes he has no case.

Mr. Reichmann: I have the Supreme Court with me on that in several cases; that is enough for me.

Mr. Ziffren: We will get to that. The whole issue is, is there a difference between reducing charity bequests and paying it out of, and if there is no difference between reducing charity bequests and paying it out of, and paying taxes out of charity bequests, then there is nothing to the contention of the plaintiffs.

Mr. Reichmann: I have many cases I am going to cite; along with Edwards versus Slocum, there are other cases in other States, pointing out there is a very vast distinction between paying a thing out of the residue and paying it out of the body of the estate that shall reduce the residue. One is not tantamount to the other.

Mr. Ziffren: When you pay a tax out of the body of the estate it is obvious you are paying it out of what is left of the estate.

Mr. Reichmann: Not at all.

Mr. Ziffren: If that is true, you are paying it out of the residue, that is the only thing you can pay.

Mr. Horton: That leaves the net estate $1,871,000, we know that is not true; they can't take that $463,000 as a deduction. They have to determine how much the charitable bequest is. It is not $463,000 by their own admission. They say $342,000 is taxes and they say $172,000 is the deduction for charity, and that is what they want in this case.

I don't know why they don't take the $463,000, why they ever made a concession.

Mr. Reichmann: I will tell you why, it is because the Supreme Court of the United States has said we are entitled to it, and it is exactly what was done in the Slocum case, unless you can satisfy the Court that the Supreme Court of the United States decision is not now operative because of the language of Section 807 of the statute.

Mr. Horton: The question is right here, is this net estate $1,827,000 the thing you are going to compute the taxes on, or is that just folderol?

The Court: It would be that, unless these exceptions are made.

Mr. Horton: We say Congress didn't contend—

Mr. Reichmann: We have heard that. Whatever the intention of Congress may have been, we must find it in the Act.

Mr. Horton: There are plenty of cases your Honor knows that the intention of Congress is to be carried out as an act.

The Court: That is fundamental.

Mr. Horton: We say then that this $463,000 is an improper deduction in this first proposition and that we
102 know that the tax, the equivalent of the tax was not the net estate, that tax, not the tax, but the equivalent to the tax, and we raised that, and instead of applying a tax rate of nine per cent as they do on this assumed rate of the 1932 Act, as amended by 1934, we add thirty-four per cent, and then we get the tax, the dependent tax, the dependent amount of charity on the actual net estate, that was the net estate in this case. Now, that is the controversy in the case.

In other words, according to the Commissioner's computation when he gets down to the real amount of the tax we find out—

The Court: What page is the Commissioner's computation found on?

Mr. Horton: It is on page five in the stipulation, page five. Now, we have a net estate of $2,821,000 instead of $1,821,000.

The Court: You made no deduction of the residuary charitable bequests?

Mr. Horton: Yes, sir. That is $1,573,000 not $1,570,000. In other words, we have determined the residuary estate being the amount actually going to charity. It will be shown in the computation and the evidence, your
103 Honor, that you are going to take.

The Court: Is there to be evidence introduced?

Mr. Horton: I understood so. This appears also in the computation.

Mr. Reichmann: I think so. There will be some evidence.

The Court: Well, let us make the record then. You want to introduce your stipulation?

Mr. Reichmann: Yes, sir.

104 Whereupon the plaintiffs to maintain the issues on their part introduced the following testimony, to-wit:

Mr. Reichmann: Now we offer in evidence the stipulation and ask that it be marked Plaintiffs' Exhibit 1, together with the documents thereto attached.

The Court: It may be admitted.

Whereupon document was marked PLAINTIFFS' EXHIBIT 1, received in evidence by the Court, and is in words and figures as follows, to-wit:

105 PLAINTIFFS' EXHIBIT "1".

106 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47259) * *

STIPULATION OF FACTS.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys of record, for the purpose of the trial of this case, that the facts hereinafter set forth shall be taken as true as though established by competent testimony taken in open court: Provided, however, that either of the parties may offer any further competent and material testimony at the trial of this case, not inconsistent with the facts herein stipulated to be taken as true.

It is further stipulated and agreed that this case shall be tried to the Court without the intervention of a jury, trial by jury being hereby expressly waived.

The Court is requested to separately state its findings of fact and conclusions of law, and to incorporate in its findings of fact the facts herein stipulated to be taken as true.

I.

That the plaintiffs are citizens of the United States residing in the City of Chicago, County of Cook, Illinois, in the Northern District of Illinois, Eastern Division, and are the duly appointed, qualified and acting Executors under the Last Will and Testament of Henry M. Wolf, de-
107 ceased, late a citizen and resident of Chicago, Illinois.

II.

That the defendant, Carter H. Harrison, is, and, at the times of payment of the estate tax and interest thereon by the plaintiffs, was a resident and inhabitant of the City of Chicago, County of Cook, Illinois, in the Northern District of Illinois, Eastern Division, and is, and at said times was, the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the First Collection District of Illinois, which District includes the aforesaid City and County.

III.

That Henry M. Wolf, plaintiffs' testator, died on June 4, 1935, leaving a last will and testament and codicil thereto, which were duly proved and admitted to probate in the Probate Court of Cook County, Illinois, in which Court the said decedent's estate has been, and is now being, administered. A true and correct copy of said last will and testament and codicil is attached to plaintiffs' complaint as Exhibit "A", which by reference is incorporated herein and made a part hereof, as though herein fully set forth.

IV.

Decedent's said will contained specific bequests to charitable organizations within the meaning of Section 303 (a) (3) of the Revenue Act of 1926, as amended, on account of which deductions should be and have been allowed, as follows: Article Seventh, $5,000.00; Article Eleventh, $248,178.33; Article Twelfth, $157,611.28; Article Thirteenth, $53,248.98; Article Fourteenth, $106,658.15; and Article Fifteenth, $1,000,000.00; the aggregate amount deducted on account of such specific charitable bequests being $1,570,696.74.

V.

Article Sixteenth of decedent's will contained the following provision:

108 All of the rest, residue and remainder of the property of whatsoever kind and nature, real, personal and mixed, and wheresoever located, which I may own or be in any way entitled to at the time of my death (and including

therein all lapsed bequests and lapsed gifts, in trust or otherwise), I give, devise and bequeath to the following charitable institutions, or to such of them as shall at the time of my death be actually engaged in carrying on their present activities, or similar activities, in Chicago, Illinois, and only the net income from said funds shall be used by said respective institutions for their respective charitable purposes, viz.:

Michael Reese Hospital of Chicago,
The Visiting Nurse Association of Chicago,
The University of Chicago,
The Jewish Charities of Chicago.

VI.

Except a direction in Article Fourth of decedent's will that all inheritance, legacy, succession and estate taxes (both State and Federal) on all of the gifts and bequests contained in Articles Third and Fourth of said will should be paid by his executors out of his general estate, decedent's said will contained no provision regarding the payment of federal estate tax or Illinois inheritance taxes.

VII.

Plaintiffs, as executors of the estate of Henry M. Wolf, deceased, duly filed with the defendant, as Collector of Internal Revenue, an estate tax return for the estate of their decedent, reporting therein a gross estate of $4,238,805.97; total funeral expenses, administration expenses, debts and claims, and executors' and attorneys' fees aggregating $290,060.44; deductions for charitable bequests in the aggregate amount of $1,656,650.73; a specific exemption of $100,000 for the tax imposed by the Revenue Act of 1926 and a specific exemption of $50,000 for the tax imposed by the Revenue Act of 1932; a net estate for tax imposed by the Revenue Act of 1926 of $2,192,094.80, and a net tax thereon under the Revenue Act of 1926 of $30,541.90; and
109 a net estate for tax imposed by the Revenue Act of 1932 of $2,242,094.80, and a net additional tax thereon under the 1932 Revenue Act of $406,202.75. The estate tax shown to be due by plaintiffs on said return amounted to the sum of $436,744.65, which was paid under protest by

plaintiffs to the defendant as Collector of Internal Revenue on May 28, 1936.

VIII.

Thereafter plaintiffs' estate tax return was transmitted to the Commissioner of Internal Revenue with the result that the Commissioner on his final audit and review of said estate tax return determined and found a gross estate of $4,238,805.97; allowable deductions for funeral expenses, administration expenses, debts and claims, and executors' and attorneys' fees, aggregating $283,810.44; deductions for specific charitable bequests of $1,570,696.74, and for the residue passing to charity, as determined by him, $3,223.51, making total charitable deductions of $1,573,920.25; a specific exemption of $100,000 for the tax imposed by the Revenue Act of 1926 and a specific exemption of $50,000 for the tax imposed by the Revenue Act of 1932; a net estate for tax imposed by the Revenue Act of 1926 of $2,281,075.28 and a net tax thereon under the 1926 Revenue Act of $32,321.51; a net estate for tax imposed by the Revenue Act of 1932 of $2,331,075.28, and a net tax thereon under the 1932 Revenue Act of $427,558.06; and a total net tax on decedent's estate of $459,879.57. Upon the basis of this determination, the Commissioner asserted a deficiency in tax against the decedent's estate of $23,134.92 of which plaintiffs were duly notified by letter dated November 1, 1937. A true and correct copy of said letter of November 1, 1937, is hereto attached, and made a part hereof as Exhibit "B".

110 IX.

The Commissioner in his final audit and review of plaintiffs' estate tax return determined decedent's net estates for the estate taxes imposed by the Revenue Act of 1926, and by the Revenue Act of 1932, as amended by the Revenue Act of 1934, respectively, as follows:

Gross Estate		$4,238,805.97
Deductions, 1926 Act:		
Debts and Charges	$ 283,810.44	
Charitable Deductions	1,573,920.25	
Specific Exemption	100,000.00	1,957,730.69
Net Estate 1926 Act		$2,281,075.28

Gross Estate		$4,238,805.97
Deductions, 1932 Act:		
Debts and Charges	$ 283,810.44	
Charitable Deductions	1,573,920.25	
Specific Exemption	50,000.00	1,907,730.69
Net Estate 1932 Act, as amended		$2,331,075.28

Thereon the Commissioner computed net federal estate taxes, as follows:

Net Estate, Revenue Act of 1926	$2,281,075.28
Complete Block. (See Column (A), Table I, page 15, Regulations 80)	2,000,000.00
Excess over $2,000,000.00	$ 281,075.28
Rate of tax on excess (See Column (4), Table I, page 15, Regulations 80)	10%
Tax on Excess over $2,000,000.00	$ 28,107.53
Tax on $2,000,000.00 (See Column (4), Table I, page 15, Regulations 80)	133,500.00
Gross Tax, Revenue Act of 1926	$ 161,607.53
Maximum Inheritance Tax Credit	80%
Inheritance Tax Credit	$ 129,286.02
Net Tax under Revenue Act of 1926	$ 32,321.51
111 Net Estate for "Tentative Tax", 1932 Act	$2,331,075.28
Complete Block	2,000,000.00
Excess over $2,000,000.00	$ 331,075.28
Rate of "Tentative Tax" on excess (See Column (2), Table I, page 15, Regulations 80)	.34
Tax on Excess over $2,000,000.00	$ 112,565.59
Tax on $2,000,000.00	476,600.00
"Tentative Tax"	$ 589,165.59
Gross Tax, Revenue Act of 1926 (computed above)	161,607.53
"Additional Tax"	$ 427,558.06
Net Tax under 1926 Act	32,321.51
Aggregate Net Taxes	$ 459,879.57

The amount of the decedent's residuary estate bequeathed to charity, $3,223.51, as determined by the Com-

missioner in his said final audit and review, and the amount of the decedent's total charitable bequests, $1,573,920.25, again as determined by the Commissioner in his said final audit and review, were computed by the Commissioner, as shown in letter dated June 8, 1927, a true and correct copy of which is hereto attached and made a part hereof as Exhibit "C".

X.

The Commissioner in computing the amount receivable by charity under decedent's bequest of the residue of his estate to charity in the sum of $3,223.51, as aforesaid, first deducted from decedent's general estate the federal estate tax computed by him in the sum of $459,879.57, as shown in the preceding paragraph hereof.

The computation by the Commissioner of the amount of the estate tax to be used in determining the amount to be deducted on account of decedent's bequest of his residuary estate to charity was made by the Commissioner upon the basis of a trial computation of the amount so deductible made upon his assumption that the deduction would be the actual amount receivable by charity under decedent's bequest plus the amount of the federal estate tax. The trial computation so made by the Commissioner was made as shown in letter dated June 8, 1937 (referred to above), except that for the purpose of the trial computation, consideration was not given to the amount of the federal estate tax, and accordingly the trial computation of the Commissioner is as follows:

112 Gross Estate	$4,238,805.97
Aggregate of Amounts, other than the federal estate tax, which must be paid before there is a residue	3,775,702.89
Trial deduction on account of bequest of the residue to charity	$ 463,103.08
Specific bequests to charity	1,570,696.74
Aggregate trial charitable deduction	$2,033,799.82

Accordingly, the Commissioner computed the net estate for tax under the Revenue Act of 1926, as follows:

Gross Estate		$4,238,805.97
Deductions, 1926 Act:		
Debts and Charges	$ 283,810.44	
Trial Charity	2,033,799.82	
Specific Exemption	100,000.00	2,417,610.26
Trial Net Estate, 1926 Act		$1,821,195.71

It is agreed that the trial net estate as computed by the Commissioner under the Revenue Act of 1932, as amended, is $50,000.00 greater than the trial net estate computed by the Commissioner under the Revenue Act of 1926, and is $1,871,195.71, for the reason that the specific exemption—$100,000—under the 1926 Act is $50,000 greater than the specific exemption—$50,000—under the 1932 Act.

Upon the basis of the trial net estates so computed, the Commissioner found that the tax would exceed $200,000.00, and that the net estates would exceed $2,000,000.00, and based thereon the Commissioner computed the amount of the tax to be used in determining the amount of decedent's residuary estate bequeathed to charity (upon the Commissioner's theory) as follows:

Trial Net Estate, 1926 Act		$1,821,195.71
Rate on the excess of final net estate over $2,000,000.00 (Column 4, Table I, page 15, Regulations 80)		x.10
		$ 182,119.57
$2,000,000.00 × .10	$200,000.00	
Tax on $2,000,000.00	133,500.00	
Correction for applying 10% to the entire net estate		66,500.00
Trial Tax 1926 Act		$ 115,619.57
Trial State Inheritance Tax Credit (80% of above amount)		$ 92,495.66

113 Trial Net Estate, 1932 Act		$1,871,195.71
Rate on the excess of final net estate over $2,000,000.00 (Column (2), Table I, page 15, Regulations 80)		x.34
		$ 636,206.54
$2,000,000.00 × .34	$680,000.00	
Tax on $2,000,000.00	476,600.00	
Correction for applying 34% to the entire net estate		$ 203,400.00
Trial Aggregate of both taxes		$ 432,806.54
Less Credit against the 1926 Tax		92,495.66
Total Trial Net Tax		$ 340,310.88

This trial tax of $340,310.88, so found by the Commissioner, was divided by him by 1—1 (.34 — [.8 x .10]), or by .74, which equals $459,879.57, the amount found by the Commissioner in his computation as the correct tax upon decedent's estate in his determination of the amount of $3,223.51 as the net benefit receivable by charity under decedent's bequest of his residuary estate to charity. In the divisor used by the Commissioner, i. e., "1—1 (.34 — [.8 x .10])" "1." represents the portion of decedent's residuary estate bequeathed to charity or the whole; ".34" represents the highest rate of tax under the Revenue Act of 1934, applicable to decedent's net estate as determined by him; ".10" represents the corresponding rate of tax under the Revenue Act of 1926; "[.8 x .10]" represents the 80 per cent credit against the tax, and "(.34 — [.8 x .10])" or 26 per cent represents the highest effective rate of tax applicable to decedent's net estate as found by the Commissioner.

XI.

Plaintiffs, having waived their right to file a petition for review with the United States Board of Tax Appeals, the Commissioner assessed against decedent's estate said deficiency of $23,134.92, together with interest thereon in the sum of $1,934.46, or a total of $25,069.38, which amount plaintiffs paid to defendant under protest on November 13, 1937, and expressly reserved to themselves and their successors the right to file a claim or claims for refund

upon any grounds and for any amount which they may
114 deem proper, and, if the said claim or claims shall be rejected in whole or in part, to sue for the recovery of any amounts covered by the said claim or claims.

XII.

Thereafter, on March 7, 1938, plaintiffs duly filed with the defendant, as Collector of Internal Revenue, for transmission to the Commissioner of Internal Revenue, claim for refund of $119,069.43 of the estate tax and interest thereon, or of such other amount as might be legally refundable.

XIII.

Thereafter, the Commissioner of Internal Revenue, by letter dated May 10, 1938, forwarded to plaintiffs by registered mail, notified plaintiffs that said claim for refund had been wholly disallowed and rejected. True and correct copies of plaintiffs' claim for refund filed March 7, 1938, referred to in paragraph XII, hereof, and of said letter of rejection dated May 10, 1938, are hereto attached and made a part hereof as Exhibit "D".

XIV.

Plaintiffs concede that the federal estate taxes imposed by the Revenue Acts of 1926 and 1932 upon decedent's estate as computed by them under plaintiffs' theory and construction of Section 807 of the Revenue Act of 1932, amending Section 303(a) (3) of the Revenue Act of 1926, amount to the sum of $342,744.60, and that the amount of the refund claimed by plaintiffs in the sum of $119,069.43 is the difference between the tax paid by the plaintiffs under protest of $459,879.57, plus interest of $1,934.46, aggregating $461,814.03 and said sum of $342,744.60 conceded by plaintiffs to be the federal estate taxes hereunder.

It is conceded and stipulated that if plaintiffs' theory and construction of Section 807 of the Revenue Act of 1932
115 is sustained by the Court, then plaintiffs are entitled in this proceeding to recover the sum of $119,069.43, with interest as provided by law, while if the Commissioner's theory and construction of Section 807 of the

Revenue Act of 1932 is sustained by the Court, defendant is entitled to judgment dismissing plaintiffs' petition at plaintiffs' costs.

It is agreed and stipulated that the deduction and federal estate taxes computed upon plaintiffs' said theory and construction if Section 807, aforesaid, is as follows:

Gross estate		$4,238,805.97
Deductions, 1926 Act:		
Deductible Debts and charges	$ 283,810.44	
Charitable deductions	2,033,799.82	
Specific exemption	100,000.00	2,417,610.26
Net estate 1926 Act		$1,821,195.71
Gross estate		$4,238,805.97
Deductions, 1932 Act:		
Deductible Debts and charges	$ 283,810.44	
Charitable deductions	2,033,799.82	
Specific exemption	50,000.00	2,367,610.26
Net estate 1932 Act		$1,871,195.71
Computation of Federal Estate Tax:		
Net estate Revenue Act of 1926		$1,821,195.71
Complete block (See Column (A), Table I, page 15, Regulations 80)		1,500,000.00
Excess over $1,500,000.00		$ 321,195.71
Rate of tax on excess (See Column (4), Table I, page 15, Regulations 80)		9%
Tax on excess over $1,500,000.00		$ 28,907.62
Tax on $1,500,000.00 (See Column (4), Table I, page 15, Regulations 80)		88,500.00
Gross Tax, Revenue Act of 1926		$ 117,407.62
Maximum Inheritance Tax credit		80%
Inheritance Tax Credit		93,926.08
Net tax under Revenue Act of 1926		$ 23,481.54

116 Net estate for "Tentative Tax" Revenue Act of 1932	$1,871,195.71
Complete block	1,500,000.00
Excess over $1,500,000.00	$ 371,195.71
Rate of "Tentative Tax" on excess (See column (2), Table I, page 15, Regulations 80)	31%
Tax on excess over $1,500,000.00	$ 115,070.68
Tax on $1,500,000.00	321,600.00
"Tentative Tax"	$ 436,670.68
Gross tax, Revenue Act of 1926 (computed above)	117,407.62
"Additional Tax"	$ 319,263.06
Net tax under 1926 Act	23,481.54
Aggregate net taxes	$ 342,744.60

XV.

It is stipulated and agreed that the Court may take judicial notice of the laws of the State of Illinois pertaining to estate, legacy, succession, or inheritance taxes.

Pam, Hurd and Reichmann,
Attorneys for Plaintiffs.
J. Albert Woll,
United States Attorney.

117 **EXHIBIT "B".**

Copy sent Attorney.

cc—A. F. Reichman, Attorney,
134 South La Salle Street,
Chicago, Illinois.

Copy sent Attorney.
Albert S. Lisenby,
837 Munsey Building,
Washington, D. C.

Nov 1-1937.

MT:ET-C1-11485-1st Illinois
Estate of Henry M. Wolf
Date of death—June 4, 1935

The Northern Trust Company, et al., Executors,
50 South La Salle Street,
Chicago, Illinois.

Sirs:

A final audit of the estate tax return filed for the above-named estate after consideration of your protest, the evidence submitted in connection with the hearings in this office on February 18, 1937, May 26, 1937, and September 16, 1937, and other data on file results in the following determination:

Deductions.

	Returned	Tentatively Determined	Determined
Debts of decedent:			
Item 25	$6,000.00	$6,000.00	$0.00
Item 26	250.00	250.00	0.00

Since the obligation of decedent represented by these two pledges was not incurred for a full and adequate consideration in money or money's worth, the deductions are not allowable. This adjustment was indicated in Bureau letter dated June 8, 1937.

Charitable, public, and similar gifts and bequests	$1,656,650.75	$1,404,911.92	$1,573,920.25

The computation of the charitable deduction herein determined is fully set forth in Bureau letter dated June 8, 1937.

118 The following summary is submitted:

		Determined
Gross estate	$4,238,805.97	
Deductions, 1926 Act	1,957,730.69	
Net estate, 1926 Act	2,281,075.28	
Net estate, 1932 Act	$2,331,075.28	
Gross tax, 1926 Act	$ 161,607.53	
Credit for gift tax	0.00	
Gross tax less gift tax credit	$ 161,607.53	
Credit for estate or inheritance tax	129,286.02	
Net tax, 1926 Act		$ 32,321.51
Total gross taxes, 1926 and 1932 Acts	$ 589,165.59	
Gross tax, 1926 Act	161,607.53	
Gross additional tax	$ 427,558.06	
Credit for gift tax	0.00	
Net additional tax		427,558.06
Total net tax		$459,879.57
Returned tax	$ 436,744.65	
Amount assessed as deficiency pursuant to waiver	23,134.92	459,879.57
Deficiency		$ 0.00

Payment of the amount assessed pursuant to waiver should be made to the collector upon receipt of his notice and demand.

The waiver, Form 890, submitted by the estate contains a statement reserving the right to file a claim for refund. Your attention is called to the fact that any claim for refund in this case must be filed within the statutory period.

Respectfully,

(Signed) D. S. Bliss,
D. S. Bliss,
Deputy Commissioner.

Enclosure:
Waiver
PLM:SE

119 **EXHIBIT "C".**

Copy sent Attorney.
cc—A. F. Reichman, Attorney,
134 South La Salle Street,
Chicago, Illinois.

Copy sent Attorney.
Albert S. Lisenby,
837 Munsey Building,
Washington, D. C.

Jun 8, 1937.

MT-ET-C1-11485-1st Illinois
Estate of Henry M. Wolf
Date of death—June 4, 1935

The Northern Trust Company, et al., Executors,
50 South La Salle Street,
Chicago, Illinois.

Sirs:

In accordance with the understanding at the hearing in this office on May 26, 1937, in connection with the above-named estate, the following statement is submitted:

Deductions.

	Returned	Tentatively Determined	Proposed Adjustment
Debts of decedent:			
Item 25	$6,000.00	$6,000.00	$0.00
Item 26	250.00	250.00	0.00

Since the obligation of decedent represented by these two pledges was not incurred for a full and adequate consideration in money or money's worth, the deductions are not allowable.

Charitable, public, and similar gifts and bequests	$1,656,650.73	$1,404,911.92	$1,573,920.25

The charitable deduction is computed as follows:

Gross estate		$4,238,805.97
Funeral expenses	$ 4,359.68	
Attorneys' fees	200,000.00	
Miscellaneous administrative expenses	4,173.54	
Debts of decedent	75,277.22	
Pledges	6,000.00	
	250.00	

			Charity
120	Gross estate (brought forward)		$4,238,805.97
	Will		
	Article 3....	$ 3,700.00	
		2,100.00	
		2,500.00	
		1,100.00	
		800.00	
		800.00	
		700.00	
		600.00	
		600.00	
		500.00	
		400.00	
		400.00	
		400.00	
		400.00	
		400.00	
		300.00	
		200.00	
	Article 4....	10,000.00	
		15,000.00	
		50,000.00	
	Article 5....	141.00	
		100.00	
		24.00	
		100.00	
		55.00	
		18.00	
	Article 6....	10,000.00	
		10,000.00	
		10,000.00	
		10,000.00	
	Article 7....	5,000.00	
		5,000.00	
		1,000.00	
		1,000.00	
		5,000.00	$ 5,000.00
	Article 8....	10,000.00	
		5,000.00	
		5,000.00	
		5,000.00	
	Article 9....	100,000.00	
		100,000.00	
		100,000.00	

121		Charity
Gross estate (brought forward)		$4,238,805.97
Will (continued)		
Article 11		
($300,000.00)		
Funds necessary to produce $1,500.00 a year payable in quarterly installments.		
Age 90, factor .90441	$ 38,058.00	$ 34,420.04
Age 64, factor .64812	38,058.00	24,666.15
Age 75, factor .77251	38,058.00	29,400.19
Age 74, factor .76215	38,058.00	29,005.90
Age 56, factor .55116	38,058.00	20,976.05
Balance of fund	109,710.00	109,710.00
Article 12		
($1,200,000.00)		
Tax on life estate	$ 107,381.67	
Tax on bequests after life estate $750,000.00 less $26,638.53	26,638.53	
	723,361.47	
Balance of fund—$342,618.33, age 48, factor .46002	342,618.33	157,611.28
Article 13		
($250,000.00)		
Tax on life estate	19,714.52	
Tax on bequests after life estate $100,000.00 less $2,474.51	2,474.51	
	97,525.49	
Balance of fund—$130,285.48, age 43, factor .40871	130,285.48	53,248.98
Article 14		
($250,000.00)		
Tax	18,144.54	
Balance of fund—$231,855.46, age 48, factor .46002	231,855.46	106,658.15

122

		Charity	
Gross estate (brought forward)			$4,238,805.97
Will (continued)			
Article 15	$1,000,000.00	$1,000,000.00	
Illinois inheritance taxes on articles 3 and 4	9,670.46		
Illinois inheritance taxes charged to estate on articles 11, 12, 13, and 14, and not adjusted above in connection with the funds— $176,987.76 less $174,353.77	2,633.99		
Federal estate tax	459,879.57		
Totals	$4,235,582.46	$1,570,696.74	
Total of all items above			4,235,582.46
Residue passing to charity			$ 3,223.51
Add total charitable items above			1,570,696.74
Total charitable deduction			$1,573,920.25

The adjustments under articles 12 and 13 are subject to the submission of proof that under the Illinois law and decisions, charity will be paid the sums covering State inheritance taxes in the amount of $26,639.53 (Article 12), and $2,474.51 (article 13). This matter is referred to on page 45 of the estate's brief dated March 9, 1937.

An early response to this letter will expedite the closing of the case. In your reply, please refer to the file symbols, attention PLM.

Respectfully,
(Signed) D. S. Bliss,
D. S. Bliss,
Deputy Commissioner.

PLM:EGL

122½ Part of Deft's. Exhibit "D" (Claim for Refund) is attached to Complaint as Exhibit "B".

123 EXHIBIT "D".

cc Albert S. Lisenby, Atty
Munsey Bldg.
Washington, D. C.

Copy sent Attorney

cc A. F. Reichman, Atty.
134 S. LaSalle Street,
Chicago, Illinois.

Copy sent Attorney

May 10 1938

MT-ET-C1-11485-1st Illinois
Estate of Henry M. Wolf
Date of death—June 4, 1935

The Northern Trust Company, et al., Executors,
50 South LaSalle Street,
Chicago, Illinois.

Gentlemen:

Reference is made to your claim for refund of $119,069.43 paid as Federal estate tax (and interest thereon) with respect to the estate of the above-named decedent.

The issue presented is as to the deduction to be allowed under section 303(a)(3) of the Revenue Act of 1926, as amended by section 807 of the Revenue Act of 1932, on account of the bequest of the residue of the estate to charitable uses.

The will of the decedent did not give any direction as to the source of payment of the Federal estate tax. Therefore, under the Illinois law, the Federal estate tax is a charge against the general estate, having priority over all bequests. The claim is presented as though the tax were to be paid after the payment of all bequests. For convenience in treatment the phraseology of the claim will be followed, although of course the Federal estate tax is a primary charge upon the estate.

Your claim is that on account of the residuary bequest to charity there should be deducted $463,103.08, the "net residuary estate (before any reduction on account of Federal estate tax)." Under that theory, the tax would be

$342,744.58. Subtraction of this amount from the $463,103.08 "residuary estate" leaves $120,358.52 as the benefit to charity on account of which you claim a deduction of $463,103.88, almost four times the benefit which charity would receive.

Under the theory of the claim, charity would receive $120,358.52, composed of two parts: (1) $3,223.51 which would have been the amount of the residue if the resi-
124 due had been bequeathed to an individual and (2) $117,135.01 of revenue surrendered by the Government on account of the gift to charity of $3,223.51 by the testator. Thus, of the amount actually received by charity, the testator would contribute 2.4 percent, and the Government would contribute 97.6 per cent.

Had the testator given to charity $3,223.51 as a preferred legacy, the deduction on account thereof would have been $3,223.51. You contend that by subjecting his gift to charity of $3,223.51 to the hazards of a residuary bequest, the testator increased the deduction to $436,744.65, that is, the deduction was increased 135 times.

In *Y. M. C. A.* v. *Davis*, 264 U. S. 47, the Court stated that in providing for the charitable deduction:

"Congress * * * was intending to favor gifts for altruistic objects, not by specific exemption of those gifts but by encouraging testators to make such gifts. Congress was in reality dealing with the testator before his death. It said to him: 'If you will make such gifts, we will reduce your death duties and measure them, not by your whole estate, but by that amount, less what you give.'"

The case of *Edwards* v. *Slocum*, 264 U. S., 61, arose under the retroactive provision of the Revenue Act of 1918 allowing a deduction on account of charitable bequests. There was no testamentary direction as to the source of payment of the Federal estate tax. Under the New York law, in force at the date of death, the Federal estate tax was a charge against the general estate having priority over all bequests. In that case, the residue was bequeathed to charity. The Court held that, as used in paragraph three of section 403(a) of the Revenue Act of 1918, the word "bequest" did not mean what you contend it means, i. e., that a residuary bequest is a bequest "only of what is left after the payment of the paramount claims." The Court held that, as used in the paragraph authorizing the

charitable deduction, the amount of the bequest meant what would have been the amount of the bequest if there were no Federal estate tax.

In view of the decision in *Edwards* v. *Slocum*, 264 U. S. 61, the Revenue Act of 1924 added to the paragraph authorizing deduction on account of a charitable bequest 125 a sentence which provided that if the estate tax is payable from "the bequest * * * otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests * * * reduced by the amount of such taxes." The words "such bequests" referred to the "bequests * * * otherwise deductible under this paragraph", and the "bequests otherwise deductible" are the bequests mentioned in the first sentence. In this case, the residuary "bequest otherwise deductible" is the net residuary estate (before any reduction on account of Federal estate tax) of $463,103.08. From this residuary "bequest" the Federal estate tax must be paid. Therefore, the deduction on account of the "bequest" is the amount thereof "reduced by the amount of such taxes."

The explicit terms of the statute refute not only your principal claim but also your alternative claim that "such bequest" should be reduced not "by the amount of such taxes" but by the amount which would have been such taxes if the limitation on the deduction had not been imposed. The only argument advanced in support of the alternative claim is the supposed ease of computation. In no case would the method outlined by you materially decrease the labor of computation, while in many cases it would greatly increase the labor of computation. In view of the express terms of the amendment, there is no basis for discriminating to any extent in favor of a testator who makes a bequest requiring a computation and against a testator who make a definite bequest to charity requiring no computation. The Senate Report 52, concerning the Revenue Act of 1926, and the report of the Ways and Means Committee of the House of Representatives recommending the enactment of section 807 of the Revenue Act of 1932 make it clear that the restriction imposed by the second sentence of paragraph three is just what was intended and that the action of the Bureau in this case is in accordance therewith.

Reference is made to your claim that section 807 of the Revenue Act of 1932, which restricts the charitable deduction to the amount of the actual benefit to charity, is obnoxious to the Fifth Amendment to the Constitution of the United States. The allowance of any deduction on account of charitable bequests rests in the discretion of Congress, which may properly restrict the deduction to the equitable basis of the actual benefit to charity so as to avoid inequities.

In view of the foregoing, your claim for refund is rejected in its entirety.

Respectfully,
Guy T. Helvering,
Commissioner.

By:
(Signed) D. S. Bliss
D. S. Bliss,
Deputy Commission.

CTK/MEB

126 Mr. Reichmann: Now we offer in evidence also a copy of Mr. Wolf's will referred to in the complaint filed in this case, and ask that it be marked Plaintiffs' Exhibit 2.

The Court: Let it be admitted.

Whereupon document was marked PLAINTIFFS' EXHIBIT 2, received in evidence by the Court, and is in words and figures as follows, to-wit:

127 Mr. Reichmann: Now we offer in evidence a letter under date of May 28, 1936, from Mary E. Kaufman to the Honorable Carter H. Harrison, Collector of Internal Revenue, being a letter transmitting payment of the Federal Estate Tax in accordance with the return filed by the plaintiffs at that time of $436,744.65, together with the notations on the face of this letter, and also the document accompanying it headed notice and demand for estate of gift tax duplicate and the stamps on the face of that and ask that they be marked respectively Plaintiffs' Exhibits 3 and 4.

The Court: Is there any objection?

Mr. Horton: May I ask the purpose of this, Mr. Reichmann?

Mr. Reichmann: The purpose of it is to show specifically the amount we paid and paid under protest and acceptance and receipt.

The Court: Is that set forth in your stipulation?
Mr. Horton: Yes, sir.
The Court: Any objection?
Mr. Horton: No objection.
The Court: They may be admitted.

Whereupon documents were marked PLAINTIFFS' 128 EXHIBITS 3 AND 4, respectively, received in evidence by the Court, and are in words and figures as follows, to-wit:

128½ PLAINTIFF'S EXHIBITS 3 AND 4.

129 PLAINTIFF'S EXHIBIT 3.

The Northern Trust Company
Capital and Surplus $9,000,000
Chicago

(Cut)

LaSalle & Monroe Streets
Telephone Franklin 7070
Henry M. Wolf

May 28, 1936

The Honorable Carter H. Harrison
Collector of Internal Revenue at Chicago
Federal Building, Chicago

Re: Estate of Henry M. Wolf, Deceased
Date of death, June 4, 1935

Dear Sir:

We hand you herewith the Federal Estate Tax Return in the Henry M. Wolf Estate, executed in duplicate by Mary E. Kaufman and The Northern Trust Company as Executors of the Will and Codicil of Henry M. Wolf, Deceased, together with our check to "Collector of Internal Revenue at Chicago" in the amount of Four Hundred Thirty-six Thousand Seven Hundred Forty-four Dollars and Sixty-five Cents ($436,744.65)—the amount of the estimated tax as shown by the Return; and we are making this payment under protest.

We are also enclosing one certified copy of the Last Will and Testament of Henry M. Wolf, one uncertified copy and one certified copy of the bill of appraisement, certified by the appraiser company.

Please acknowledge receipt on the duplicate of this letter which we hand you for that purpose, and give us such other receipt as is customary.

Yours very truly,

Mary E. Kaufman,
The Northern Trust Company,
By J. C. Smith,
Its Ass't Secretary.

) As Executors
) under the Last
) Will and
) Testament and
) the Codicil
) thereto of
) Henry M. Wolf,
) Deceased.

OK

(Stamped) Received May 28, 1936.

(On right hand margin) Paid under protest.

130 PLAINTIFF'S EXHIBIT 4.

Notice and Demand for Estate or Gift Tax

Notice is hereby given that there has been assessed against you the amount as herein stated.

The assessment being due and payable, demand is hereby made for the immediate payment of the said tax, together with such penalties and interest as may have accrued thereon.

To avoid additional interest on the assessment at the rate of 1 per centum a month until paid, payment should be made within the time stated on the back of this form.

Payment must be made to the Collector of Internal Revenue at .....

Date Actual date of payment.
5/28/36

.....
Collector of Internal Revenue.

To the Collector of Internal Revenue:

I hereby tender the sum of $..... in payment of the tax, penalties, and interest as are shown hereon, together with all other interest accrued to the date of payment.

.....

(Signature of taxpayer)

Collector's "Paid" Stamp (Stamp illegible)

Name and Address—Estate of Henry M. Wolf, Northern Trust Co., Exec., 50 S. La Salle St., Chicago, Ill.

Items—436,744.65 Paid under protest.

Paid—436,744.65.

Assessment—(Blank)

Description—Retd. Est. Tax. Death date 6-4-35 May 1936 List.

Return This Form with Remittance. (See back of form for rules relating to interest.)

131 Mr. Horton: May I call your Honor's attention to the fact that the amount of tax returned in this case was $436,744.65, returned and paid. I think it is important to know that because the difficulty of the computation shows up in this exhibit.

Mr. Reichmann: That is all right, it was paid under protest.

Now we also offer in evidence a copy of a letter of transmittal addressed to the Collector of Internal Revenue, dated November 13, 1937, enclosing a remittance of $23,069.38, in payment of Federal Estate Deficiency Tax, and ask that it be marked Plaintiffs' Exhibit 5.

Mr. Horton: What is the purpose of this?

Mr. Reichmann: The same.

Mr. Horton: To show the protest?

Mr. Reichmann: Yes.

Mr. Horton: It is stipulated,—

Mr. Reichmann: I know it is stipulated but I would like the phraseology.

The Court: Let it be admitted.

Whereupon document was marked PLAINTIFFS' EXHIBIT 5, received in evidence by the Court, and is in words and figures as follows, to-wit:

131½ **PLAINTIFF'S EXHIBIT 5.**

132 Copy from
The Northern Trust Company
Chicago

Henry M. Wolf

November 13, 1937

Collector of Internal Revenue
United States Courthouse
Chicago, Illinois

Dear Sir:

In Re: Estate of Henry M. Wolf
Date of Death—June 4, 1935

We enclose our Secretary's check in the amount of $25,069.38 in full payment of the Federal estate tax deficiency in the matter of the Estate of Henry M. Wolf, deceased, which has been assessed pursuant to a Waiver of Restrictions executed by the Co-Executors of the decedent's estate.

The details of the payment follow:

Deficiency	$23,134.92
Interest at 6% from June 4, 1936 to October 26, 1937	1,934.46
Total	$25,069.38

Will you please acknowledge receipt of this payment by signing and returning the enclosed carbon copy of this letter, together with your standard form of receipt.

Very truly yours,

S. G. Creden,
S. G. Creden,
Assistant Manager, Tax Division.

SGC:MMK
Enc.

Received the above described check:

.....

Dated

133 Mr. Reichmann: Now in addition to that we offer in evidence a receipt with the stamp of "Received Payment, November 15, 1937" of this sum of $23,069.38, and ask that it be received in evidence.

Mr. Horton: The purpose of these exhibits is not entirely clear to me because of the stipulated facts. If it is admitted to vary the terms of the stipulation then I object to it, but I don't see anything of that kind right at present. We admit and it is stipulated they paid a tax of $436,000.00 on their return under protest.

Mr. Reichmann: Well, accompanying that was a waiver and then the reservation that "The undersigned executors expressly reserve for themselves and their successors the right to file a claim or claims for refund upon any grounds and for any amount which they may deem proper and, if the said claim or claims shall be rejected in whole or in part, to sue for the recovery of any amounts covered by the said claim or claims," and I want to introduce this in evidence, showing the circumstances and conditions under which it was paid.

Mr. Horton: I think in view of the stipulation, I will object to that.

The Court: Let it go in subject to the objection.

134 Whereupon documents were marked PLAINTIFFS' EXHIBITS 6 AND 7, received in evidence by the Court, subject to objection, and are in words and figures as follows, to-wit:

134 **PLAINTIFFS' EXHIBIT 6.**

135 Form 1—Revised Feb. 1926
Treasury Department
Internal Revenue Service

RECEIPT FOR PAYMENT OF TAXES

Duplicate

Collector's Office 1st, District of Illinois
at Chicago Date November 15, 1937
(Name and Address of Taxpayer)

Estate of:

Henry M. Wolf,
The Northern Trust Company
50 S. La Salle Street,
Chicago, Illinois.

Estate Tax
(Class of tax)

.....

(Description of collection: tax, penalty,

.....

interest, or offer in compromise, etc.)

.....

.....

.....

(Period covered)

Amount, $25,069.38

Received payment.

Collector of Internal Revenue.

(Stamp) Received Payment Nov. 15, 1937 Carter H. Harrison No. 4 Collector of Internal Revenue First District Illinois.

135½ **PLAINTIFFS' EXHIBIT 7.**

136 Form 890
Treasury Department
Internal Revenue Service
Revised November 1934

WAIVER OF RESTRICTIONS AGAINST IMMEDIATE ASSESSMENT AND COLLECTION OF DEFICIENCY IN ESTATE TAX.

MT-ET-C1-11485-1st Illinois

Estate of Henry M. Wolf
Date of death—June 4, 1935

Pursuant to the provisions of section 308(d) of the Revenue Act of 1926, the undersigned executors of the estate of Henry M. Wolf, Deceased waives the restrictions provided in section 308(a) of the Revenue Act of 1926, and consent to the assessment and collection of a deficiency in estate tax in the sum of $23,134.92, together with interest thereon as provided by law.

The undersigned executors expressly reserve to themselves and their successors the right to file a claim or claims for refund upon any grounds and for any amount which they may deem proper, and, if the said claim or claims shall be rejected in whole or in part, to sue for the recovery of any amounts covered by the said claim or claims.

Mary E. Kaufman and
The Northern Trust Company
By H. McArthur,
Its Vice President.
Executors.
50 South La Salle Street,
Chicago, Illinois.
(Address)

Date October 11, 1937.

Note.—This waiver does not extend the statute of limitations for refund or assessment of tax, and is not an agreement as provided under section 606 of the Revenue Act of 1928. The submission of the waiver will not prejudice the right to file a claim for refund of any portion of the tax, but will expedite the settlement of the case and will reduce the accumulation of interest, as the regular interest period terminates 30 days after the filing of the waiver or on the date of assessment, whichever is earlier.

137 LAWRENCE M. GRAVES, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination by Mr. Reichmann.

Q. I want to show Mr. Graves a copy of the stipulation, I want to use the original, and there will be no question about it, I take it?

Mr. Horton: No.

Mr. Reichmann: Q. I hand you a copy of the stipulation entered into between the parties to this suit and introduced in evidence.

Q. What is your name?

A. Lawrence M. Graves.

Q. What is your occupation, Mr. Graves?

A. Professor of mathematics in the University of Chicago.

Q. What is your age, may I ask?

A. Forty-four.

Q. How long have you been engaged in that capacity at the University of Chicago?

A. I have been teaching at the University of Chicago since 1926.

Q. You specialize in mathematics, do you not?

A. Exclusively.

138 Q. From the highest point on?

A. Well, not clear down to first grade. It begins with freshman and college mathematics on up.

Q. I think that is too bad. Now, Mr. Graves, have you studied the stipulation of facts entered into between the parties to this suit?

A. I have.

Q. Have you a copy with you that you used for that study?

A. I have had a copy; I think it was not exactly the final form, but substantially so.

Q. Now, have you made a particular study of Articles 9 and 10, pages 5 to 6, inclusive, of the stipulation?

A. Yes, I have.

Q. And have you reviewed its method of imposing the Federal Estate Tax in this case?

A. Yes, sir, I have studied that, in considerable detail.

Mr. Reichmann: If your Honor please, I think I will hand you the stipulation.

The Court: You may need it, I can look over his shoulder.

Mr. Reichmann: No, I have another copy. I don't need it. I will hand it to you.

139 Q. Now, turn to page five, Mr. Graves, and just for the purpose of clarifying something that may not clearly appear, I call your attention to the item Charitable Deduction $1,573,920.25, have you got that?

A. Yes.

Q. Of what items is that aggregate made up, in other words, I call your attention to what the specific bequests and legacies were.

A. This was the specific bequest.

Q. Of $1,570,696.00?

A. Yes.

Q. Isn't that $3,223.51 the amount of the residue found by the Commissioner of Revenue?

A. Yes, sir, the Commissioner.

Q. Going to charity?

A. Yes, sir.

Mr. Ziffren: If your Honor please, speaking for the Government, I don't think this witness is qualified.

Mr. Reichmann: Well, that appears from the stipulation.

Mr. Ziffren: Then we object to the question.

Mr. Reichmann: Well, his Honor was in doubt a little as to that figure and I was just trying to clarify it.

140 The Court: I suppose that is clarified under the stipulation. Unless he filed the figures himself, he wouldn't be competent to testify.

Mr. Reichmann: Very well.

Q. Now, does the stipulation show the amount of the tax, the Federal Estate Tax assessed by the Government of $459,879.57?

A. That is shown on page six, isn't it?

Q. At the top of the page, isn't it?

A. Yes.

Q. All right. Now in the computation of the tax, after having deducted that amount from the amount otherwise going to charity, was or was not that amount added on to the otherwise net taxable estate in the computation?

Mr. Ziffren: May I ask Mr. Reichmann to repeat that question?

Mr. Reichmann: Read the question.

(Question read by reporter as above recorded.)

Mr. Ziffren: May we ask the witness what he understands that question to be? I frankly don't understand what it means.

The Court: Perhaps the witness understands it.

The Witness: The way I understand it, your Honor,
141 the question is, was the amount finally arrived at as the amount of tax, namely $459,000 and some dollars added to the otherwise net estate to obtain the net estate of $2,281,075.28, under the 1926 Act and $2,331,075.28, under the 1932 Act on which the computation was based on page six.

Mr. Ziffren: Well, your Honor, how does the witness know what was done?

Mr. Reichmann: Well, according to the terms of this stipulation. Is it shown by the stipulation? These are preliminary questions, if your Honor please.

The Court: Proceed.

Mr. Reichmann: And I want to put some additional questions to the witness.

The Court: Proceed.

The Witness: A. That is not shown on page five.

Mr. Reichmann: Q. Is it shown on page seven or eight?

A. I don't see it is specifically shown in this stipulation.

Mr. Reichmann: Well, I will not pursue that. I think—probably we will refer to the stipulation.

Mr. Ziffren: I think so.

Mr. Reichmann: I think it probably covers it.

142 Q. Now, I will call your attention to the computation set out on the bottom of page seven.

A. Yes.

Q. And the top of page eight. The top of page eight, terminating with the words "total trial net tax $340,310.88," have you got that before you?

A. Top of page eight. The page does not seem to be the same in this.

Q. The top of page nine.

A. I have it on page nine of this copy, it is page nine.

Q. The one I gave you?

A. Yes, sir.

Q. That was supposed to be a copy of the one on file.

The Court: I think you had better let him work from the original.

Mr. Reichmann: I guess maybe you better do that. Have you got that?

A. Yes.

Q. Now, in this computation that is set forth in the stipulation how was that $340,310.88 arrived at?

Mr. Ziffren: Well, your Honor, I think the question is objectionable, because the stipulation speaks for itself,
143 and if the stipulation does not show, the Commissioner alone knows, and the witness does not know.

The Court: He may answer subject to the objection.

The Witness: A. The amount is arrived at according to the process set forth here. The arithmetic is perfectly clear, the reason for doing the computation is not.

Mr. Reichmann: That is what I am asking you. In other words, I will ask you to state whether or not this figure of $340,310.88 represents a real tax in accordance with those computations or is predicated upon some assumption?

A. It can be justified from these computations that the $340,000.00 is the real tax, but any amount connected with the estate—

Mr. Ziffren: I don't like to repeat these objections, your Honor, may we just let the record show the Government is objecting?

The Court: Let the record show the testimony is going in subject to the objection.

Mr. Ziffren: If the stipulation speaks for itself, and if the stipulation does not, why the witness cannot know because only the Commissioner knows what is not in the stipulation.

144 The Court: Let him answer subject to the objection.

Mr. Reichmann: Q. Does that computation disclose how and by what formula, either algebraic or arithmetical, that can be arrived at?

Mr. Ziffren: I object to that. I don't know whether Mr. Graves knows that.

The Court: I think you had better reframe that question. I will sustain the objection.

Mr. Reichmann: Q. What form of calculation is involved in the determination of this $340,310.88?

Mr. Ziffren: If you know.

Mr. Reichmann: If you know.

A. I am in a little difficulty apparently in answering. The defense counsel insists that I haven't any right to say what goes on in the Commissioner's mind.

Mr. Reichmann: Well, answer the question, will you please?

A. Then I can say I can figure out by the process of algebra the means by which the Commissioner could have arrived at this figure, which is not at all apparent in the stipulation.

Q. What is that?

A. It cannot be found out from the stipulation, 145 surely, but can be found out.

The Court: Can you take the figures that are submitted and come to the same conclusion of this $340,310.88?

The Witness: Well, do you mean have I come to the conclusion that the $340,000.00 is the tax?

The Court: No, call it "x", anything.

A. Why yes, I can arrive at that figure.

Q. I mean the figure itself.

A. I can arrive at that figure by a thousand different ways.

Mr. Ziffren: I ask that the witness' answer where he used the word algebra be stricken and that the question as asked by your Honor be answered, or the answer to stand.

The Court: We will let that answer stand.

Mr. Reichmann: Q. What form of calculation or formula or process is, in your opinion, necessary to arrive at this $340,310.88?

A. I assume that the question is based upon the defendant's interpretation of the law, the question is how to do a mathmetical interpretation in the face of the defendant's interpretation of the law, and I can show that by use of the blackboard, if your Honor desires.

146 Mr. Reichmann: Q. Well, I am asking you can it be done arithmetically or does it require algebra?

Mr. Ziffren: The witness said he could do it a thousand different ways.

Mr. Reichmann: I am trying to get an answer of what is required in order to arrive at this figure.

The Witness: Q. The thing that is required is to assume that you had a specific bequest. In this case everything else except taxes is admittedly exempt. Take the specific bequest. At the time of the specific bequest the amount of the taxes which are unknown, or assuming they were known, you could compute the amount of the tax, then you have an equation by which the unknown tax appears

on both sides of the equation; by the process of algebra you can transfer—

Mr. Ziffren: I object to the use of the word algebra, we don't know what he means by algebra.

The Court: Have you been to college?

Mr. Ziffren: I have been, but I may have a different definition.

Mr. Reichmann: I will ask the witness to define what he means by algebra, as he uses it.

A. It must be admitted different mathematicians must give different answers bearing on that. The way I
147 would use algebra would be the mathematical science of reckoning with numbers known or unknown by the process of addition, multiplication, substraction and division, and the solving of equations.

Q. Again calling your attention to the stipulation, on page nine, I think you have it there, the top of page nine, where the stipulation then proceeds to say,

"This trial tax of $340,310.88, as found by the Commissioner, was divided by him—" and so forth,

Have you got that?

A. Yes.

Q. Now, what is the fact as to whether or not that entire computation from that point on and in arriving at the figures $459,879.57 is based on the assumption or hypothetical correctness of this trial tax of $340,310.88,—of the trial balance of $340,310.88?

A. The computation as I understand it would be based on the two assumptions that the total trial net tax is a true trial tax, not a true tax without a modification, trial plus the assumption, and that the method of computation is justifiable—

148 The Court: May I ask counsel a question?

Mr. Reichmann: Yes, your Honor.

The Court: What do you mean by trial tax?

Mr. Reichmann: It is so stated and I might call your Honor's attention to this stipulation on page nine.

The Court: I just had not read that part of it.

Mr. Reichmann: This trial tax of $340,310.88—

The Court: In other words, it is a sort of work sheet of the Commissioner?

Mr. Reichmann: Yes, he has undertaken to give us his calculation and so stipulated.

The Court: Go ahead.

Mr. Reichmann: Q. Does that $340,310.88, as shown by

this stipulation, indicate any actual tax against this estate, or is that an assumed figure?

A. It is not an actual tax in this case.

Mr. Ziffren: Same objection.

The Court: Same ruling.

Mr. Reichmann: Q. Now will you go on and translate into language how this formula that I have just called your attention to in this stipulation, this trial tax of $340,310.88, as found by the Commissioner is divided by him and so forth and explain that formula as you go along?

149 A. I am not quite clear as to whether you want me to begin with the original assumption I made in answer to the question a while ago, or, simply pay attention to this one formula.

Q. In answer to that I would like to have you say, I wish you to start with your assumption of this trial tax—

The Court: I think we will suspend here until two o'clock.

Whereupon court was adjourned until two o'clock P. M., December 18, 1940.

150 In the District Court of the United States.

* * (Caption—47259) * *

Wednesday, December 18, 1940,
2:00 o'clock P. M.

Court met pursuant to recess.

The Court: You may proceed.

LAWRENCE M. GRAVES, a witness called by and on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination by Mr. Reichmann (Continued).

Q. Do you recall the pending question at the time of our adjournment, Mr. Graves?

A. I would like to have it repeated, please.

Q. I will have to give it to you again; the stenographer is not here. But calling your attention to, I think, your

151 page 9.

A. All right.

Q. Beginning, "This trial tax of $340,310.88 as found by the Commissioner was divided by him," and so forth, I ask you to translate that now into language and tell just exactly what that means.

A. The first figure (1) can be thought of either as the whole amount of the estate or the whole amount of the tax which is to be computed, and the 34 per cent represents the highest rate of tax under the 1932 Act, the 10 per cent represents the highest rate of tax under the 1926 Act and the 8/10, 80 per cent represents the allowable deduction.

Q. Now, that 8 represents what? Won't you put that in language? What does the 8 represent and the 10 represent? That is what I am asking you to do.

A. Yes. The 10 represents the highest rate of tax under the 1926 Act.

Q. All right, and what does the 8 represent?

A. And the 8 represents the part of that tax under the 1926 Act which is deductible, as I understand the law.

Q. All right, go ahead.

A. Well, then, when the arithmetic is finished on this basis we find that, first of all, the highest effective rate of tax is 26 per cent and when that is subtracted you get the, —when that is subtracted from the whole of the tax we find 74 per cent.

Q. All right.

152 A. Subtract 26 per cent from a hundred per cent and you get 74 per cent.

Q. Well now, will you go right on? Now, he says "that equals $459,879.57." Tell us how they get that $459,879.57.

A. The 459 is determined by dividing $340,310.88, which was arbitrarily arrived at in the preceding computation, that is divided into or by this new factor which is obtained in this manner, by, namely, 74 per cent, and the result is $459,879.57.

Mr. Ziffren: Your Honor, might we caution the witness against the use of words like "arbitrary" and other conclusions?

Mr. Reichmann: Well, he has a right to characterize it.

The Court: He is testifying as an expert now.

Mr. Reichmann: Yes.

The Court: You can cross-examine him.

Mr. Ziffren: But there is no basis for his opinion.

Mr. Reichmann: Oh, yes, he has testified previously, and you yourself did not object, to trial tax.

Mr. Ziffren: Well, I think he can call it a trial tax then.

Mr. Reichmann: Well, he has a right to characterize it, I submit. He is an expert.

The Court: Proceed.

Mr. Reichmann: Q. Now, Mr. Graves, will you tell
153 the court, as a preliminary to some further questions I want to ask you, just what was done, according to this stipulation, by the Commissioner of Internal Revenue with this $459,879.57 which he said represents the tax?

A. Well, as I understand it he says that that represents the tax and then he has completed an audit of that amount—on pages 5 and 6 of the stipulation, isn't it? At any rate, Section 9. That is as far as I can see what he did with it. I don't know any further, of course.

Q. Well, tell us what was done with that, will you please? I want to ask you another question following.

A. Oh, the $459,000 was added to the trial net estate to obtain what he calls the true net estate.

Q. All right. Now, the trial net estate is designated what here in this stipulation?

A. The trial net estate appears on page 7 or 8, $1,821,195.71 under the 1926 Act and under the 1932 Act, $1,871,195.71.

Q. Now, having added that $459,879.57 to this designated trial net estate that you have just testified to, then what did the Commissioner do in computing the tax? Did he compute it on the aggregate of that or otherwise?

A. Then in making his final audit on the computation he computed it on the aggregate of the tax plus the trial net estate, as is shown on page 5, I guess.

Q. Now, I will ask you to state not only whether
154 that resulted in enlarging the taxable estate but also in reducing in the same amount of the charitable deductions?

A. That is correct, that it did enlarge the estate by the,—the taxable estate by the amount of the tax and reduced the charitable deductions by the amount of the tax.

Q. Now, what is the fact as to whether or not there is in this equation, in this method pursued by the Commissioner the problem of solving two mutually dependent indeterminates?

A. There are two mutually dependent indeterminates.

Mr. Ziffren: Wait a minute. Will you please repeat the question, please?

Mr. Reichmann: Read the question.

(Question read.)

Mr. Ziffren: Your Honor, we object to that on the grounds that it is wholly irrelevant. It doesn't make any difference whether it is or is not and, as Mr. Reichmann himself stated this morning, the issue in this case is not at all whether there are two mutually or three mutually dependent indeterminates or five mutually independent indeterminates or not.

The Court: Well, he may answer subject to the objection.

The Witness: The answer is that there are two mutually dependent indeterminate numbers. One is the tax and
155 the other is the amount of the charitable deduction.

Mr. Reichmann: Q. Now, then, is it possible to ascertain the amount of the tax until you have ascertained the amount of the deduction or, conversely, the amount to be added to the otherwise net taxable estate?

A. If you would proceed to do the matter by algebra, which a mathematician would do, then the algebra would be arranged so that the tax can be determined before you determine the amount of the charitable deduction.

Q. Well, can you solve that problem resulting in the fixing of the amount of the tax under those circumstances and on the theory of the Commissioner by any other means than by algebraic calculation or formula?

Mr. Ziffren: Your Honor, again we want to object on the ground it is irrelevant. It doesn't make a bit of difference. The issue in this case is entirely separate and distinct from the question as to what you use or why you used it.

Mr. Reichmann: Well, I am bringing myself entirely, if your Honor please within the decision of the United States Supreme Court in the case of Edwards vs. Slocum.

Mr. Ziffren: I do not want to argue that decision now but I don't think that decision is at all applicable to this case because in that case the government proceeded—
156 do you want to argue that?

Mr. Reichmann: No, I think not.

The Court: I will let it go in subject to the objection.

Mr. Reichmann: Yes.

The Court: All this will go in subject to objection.

Mr. Reichmann: Yes, your Honor.

Q. Now, do you remember the question that I asked you?

A. I am afraid I don't remember it exactly.
Mr. Reichmann: Read it, please.
(Question read.)
The Witness: I don't know of any other means of doing it.
Mr. Reichmann: That is all I care to ask.
The Court: Cross-examine.

Cross-Examination by Mr. Ziffren.

Q. I just have a few questions, Mr. Graves. Do you get your entire salary from the University of Chicago, which is one of the residuary legatees in this will?
A. My entire salary?
Q. Yes.
A. My entire salary.
Q. Yes, from the University of Chicago.
157 A. I have very little other income.
Q. And it all comes from the University of Chicago, one of the residuary legatees?
A. Yes.
Q. Now, Mr. Graves, how many estate taxes have you computed during your experience as a mathemafician?
A. Well, I checked the computation of this one and I computed some fictitious estate taxes on fictitious estates for purposes of comparison and study in connection with this case. I have not done any others.
Q. Have you worked on any other estates?
A. No.
Q. Computed any other estate taxes?
A. No.
Q. You testified, Mr. Graves, in answer to Mr. Reichmann's question that there were two mutually dependent indeterminates in this case?
A. Yes.
Q. Now, when you testified to that effect did you mean that there were two mutually dependent indeterminates in the stipulation of facts?
A. As I understand the stipulation of facts it does not tend to tell exactly what reasoning the Commissioner used in arriving at his result, so I was not referring to the stipulation of facts but referring to the interpretation of the tax laws.
Q. In other words—pardon me. In other words, you

were not referring to the stipulation of facts when you talked about two mutually dependent indeterminates?

158 A. Well, I cannot give a clear-cut answer there because that which I was referring to is also referred to in the stipulation, so you cannot say—

Q. Well, let me put it this way: You were not—were you basing your answer solely on the stipulation of facts?

A. No, absolutely not.

Q. You were not?

A. No.

Q. No, all right. Now, in connection with the formula on page 8 that is set out, that Mr. Reichmann asked you to explain, is there any unknown factor there at all?

A. Well, the thing that is unknown is the total true tax that is finally found.

Q. Just answer the question. Is there any unknown factor in the formula that you explained at the request of Mr. Reichmann?

A. Well, everything that is set down in the formula is a specific number. It is obviously not unknown.

Q. Then there is nothing unknown in the formula?

A. The thing that is unknown is whether the formula—

Q. Pardon me, I am asking you whether there is anything unknown in the formula?

Mr. Reichmann: He is answering you. He said it is unknown.

Mr. Ziffren: Q. I will repeat the question. Is there anything in the formula that you explained to Mr.

159 Reichmann that is unknown?

A. Well, the thing that is unknown is the meaning of the formula.

Q. But there is no factor in the formula?

A. In the formula itself everything is as plain as two and two equals four.

Mr. Ziffren: That will be all.

Redirect Examination by Mr. Reichmann.

Q. Now, take the figures and calculations in the formula; they speak for themselves and they are not unknown. That is right, isn't it?

A. They are not unknown.

Q. But before you can arrive at those figures and apply the equation that is set forth there is it necessary to determine at least tentatively some unknown factor?

A. The thing that has to be determined tentatively is the trial net tax.

Q. Yes, and how is that determined?

A. The only way I can see to determine that trial net tax is an assumption that will fit in with the formula given below it, about which you asked me, is to put the two computations together in algebraic formula.

Mr. Reichmann: Yes. That is all. Now, Miss Kaufman, will you take the stand?

160 Mr. Ziffren: Oh, can I ask him just one question, Mr. Reichmann?

Mr. Reichmann: Yes.

Mr. Ziffren: Mr. Graves, just one question before you leave.

Recross Examination by Mr. Ziffren.

Q. In your direct examination you told Mr. Reichmann that there were a thousand ways in which you could have determined this tax. Do you remember saying that?

A. Yes.

Q. How many of those ways were algebraic, in your opinion, and how many were arithmetic, in your opinion?

A. There isn't any meaning to that question. If you would like me to explain what I did mean?

Q. Sure, please do.

A. The thing I meant was that I could set down a thousand different schemes, either a thousand arithmetic or a thousand algebraic, if you want me to be generous,—I cannot do it in one afternoon,—which would arrive at the same figure. They would not have as simple reasoning behind them as the simple algebraic formula but I can set down as many different formulas for arriving at that figure as you want me to. It won't have any necessary connection with the law.

Q. Arithmetical and algebraic?

161 A. Arithmetical and algebraic, without any necessary connection with the law.

Re-redirect Examination by Mr. Reichmann.

Q. Give us an idea what you mean by arithmetical formulae within the scope of your meaning now, Mr. Graves,—simple arithmetic or complicated arithmetic or algebraic equations or what is it?

A. Oh, you can have any kind of thing. I can't give a very definite answer to that.

Q. Well, can't you give us some idea?

A. Well, I could give you a sample if you want me to.

Q. All right, let us have it.

A. We could say,—to start the thing right out here we could say take the trial net estate and divide it by 2, add a hundred thousand and multiply the result by 4 and then you can subtract two hundred thousand and then you can proceed further and finally arrive at the 340,000.

Q. Well, now, tell us why you do that?

A. I don't have any reason for doing it except to show that there are a thousand different ways of doing it.

Q. I know, but what does it result in?

A. Well, I can keep on going here if you give me time enough and arrive at $340,000.

Q. Take your first figures there, what does it represent, why do you do it that way?

162 A. It doesn't represent anything. I haven't any reason for doing it that way.

Q. Well, then you don't know if you are going to arrive anywhere, do you?

A. No, but just by some advanced calculations it will tell me that I will come out on the right spot.

Q. Advanced calculations?

A. I can make some advanced calculations that will tell me I can arrive at the right spot.

Q. That is the same thing. I suppose that a man on the street could mentally calculate that and then put it on the blackboard.

A. I suppose so.

Mr. Reichmann: That will be all.

MARY E. KAUFMAN, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Reichmann.

Q. What is your full name, Miss Kaufman?

A. Mary E. Kaufman.

Q. You are one of the executors of the Last Will and Testament of Henry M. Wolf, deceased, are you?

A. I am.

Q. And did you have to do personally and actively
163 with the filing of federal estate tax return filed with the Internal Revenue Department in the matter of Mr. Wolf's estate?

A. I did.

Q. I will ask you to state what fact or factors you, as an executrix, and your associate executor, the Northern Trust Company, took into consideration in the filing of that federal estate tax return?

A. We tried to arrive at the tax in accordance with the Act and because four charities were involved we were told by attorneys that assuming 807 would apply to us to figure a tax in that regard, so we figured the tax on the most liberal possible basis because we wanted to save any possible interest running on any deficiency, because the charities were the beneficiaries.

Mr. Ziffren: Your Honor, I move that be stricken out, I don't see the relevancy of that at all, the intent and purpose.

The Court: Well, we haven't any jury so let it go in subject to objection.

Mr. Reichmann: Q. Yes, go ahead.

A. We made the most liberal return possible because charities were involved and we did not want any interest penalties to run against us if it ultimately turned out that 807 did apply to us.

164 Q. If it did?

A. If it did, yes.

Q. Yes. Now, what is the fact as to your having or not having had information that the Internal Revenue Department was applying 807, Section 807 in the manner that they have done in this case?

A. There were some instances—

Mr. Ziffren: Pardon me. Your Honor, I object to that question. That certainly has no relevancy in this case.

The Court: Well, I agree with you on that but I will take the testimony subject to objection.

Mr. Reichmann: If your Honor please—

The Court: I will take the testimony subject to objection.

Mr. Reichmann: Yes. I just want them to say that I do not want them to draw any inferences from the fact that this federal estate tax return was filed that that be held to be against the construction that we are contending for

because your Honor will recall that when we filed that return we filed it in connection with a protest.

Mr. Ziffren: There are certainly no inferences that can be drawn, either with or without a protest.

The Court: Proceed.

The Witness: We were told that in some instances
165 the government was applying 807 and because of that we made the return on the most liberal basis that we could applying 807.

Mr. Reichmann: All right. That is all I care to ask.

Mr. Ziffren: That is all.

Mr. Reichmann: That is all I have, if your Honor please.

The Court: Has the government anything?

Mr. Ziffren: Well, your Honor, at this time the government would like to make a motion for judgment on the grounds that the facts, together with all the legitimate inferences that can be drawn from those facts, do not support a judgment for the plaintiff in any amount whatsoever and I should like leave to file a written motion to that effect th. afternoon.

The Court: File your motion.

Mr. Ziffren: What is your Honor's ruling on the motion?

The Court: Well, I am not ruling on that motion. That goes to the whole case. I say, file your motion.

Mr. Ziffren: And I have leave to file?

The Court: Any time you get ready.

Mr. Ziffren: The government would like to intro-
166 duce a certified copy of the estate tax return for the estate of Henry Wolf that was filed in this case by the duly authorized executors of the estate.

Mr. Reichmann: That I object to as incompetent, irrelevant and immaterial to any issue in this case. There is involved here—

The Court: Let it be received subject to objection.

Mr. Reichmann: Yes, your Honor.

Mr. Ziffren: Will you mark this Government exhibit number 1?

(The document above referred to was marked GOVERNMENT EXHIBIT NO. 1 and received in evidence.)

DEFENDANT'S EXHIBIT "1".

UNITED STATES OF AMERICA

(Cut)

TREASURY DEPARTMENT

June 1, 1939.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of Estate Tax Return for estate of Henry M. Wolf, Chicago, Illinois, filed by Mary E. Kaufman, Co-Executrix of the Estate of Henry M. Wolf, deceased, Chicago, Illinois, and The Northern Trust Company, Co-Executor of the Estate of Henry M. Wolf, deceased, Chicago, Illinois, on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary:

F. A. Birgfeld,

F. A. Birgfeld,

(Seal) *Chief Clerk, Treasury Department.*

168 Form 706
Treasury Department
Internal Revenue Service
Revised February 1935

ESTATE TAX RETURN

(To be filed in duplicate)

Decedent's name Henry M. Wolf
Date of death June 4, 1935
Residence at time of death Chicago, Illinois
Citizenship at time of death U. S. A.

(Space for use of collector)
Received
Received
May
28
1936
Int. Rev. 1st Dist. Ill.

(Tax paid 436,744.65 under protest C. S.)

General Instructions

Current estate tax laws.—The Revenue Act of 1926, enacted 10:25 a. m., eastern standard time, February 26, 1926, imposes an estate tax against which credit not in excess of 80% of such tax is allowable for inheritance, estate, legacy, or succession taxes paid a State, Territory, or the District of Columbia of the United States. Under this act, as amended, a specific exemption of $100,000 is authorized for the estate of a resident or citizen of the United States (or a resident only, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934).

The Revenue Act of 1932, enacted 5 p. m., eastern standard time, June 6, 1932, imposes an additional estate tax against which no credit is allowable for inheritance, estate, legacy, or succession taxes. Under this act, as amended, a specific exemption of $50,000 is authorized for the estate of a resident or citizen of the United States (or a resident only, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934).

The Revenue Act of 1934, enacted 11:40 a. m., eastern

standard time, May 10, 1934, places the estates of nonresident citizens of the United States in the same category with estates of residents by making the specific exemptions applicable and by including for tax property situated outside the United States. This act also increases the rates of the additional estate tax imposed by the Revenue Act of 1932 (effective for estates of decedents dying on or after May 11, 1934).

Return required for estate of resident or citizen.—A return on this form is required for the estate of every resident of the United States, regardless of citizenship, whose gross estate wherever situated (other than real property outside the United States) exceeded $50,000 in value at the date of death, except that if the decedent died after the enactment of the Revenue Act of 1926, and prior to the enactment of the Revenue Act of 1932, a return is required if such gross estate exceeded $100,000 in value at the date of death. A return on this form is required for the estate of every citizen of the United States, regardless of residence, who died after the enactment of the Revenue Act of 1934, and whose gross estate wherever situated (other than real property outside the United States) exceeded $50,000 in value at the date of death. A return on this form is required for the estate of every nonresident citizen of the United States who died prior to the enactment of the Revenue Act of 1934 and any part of whose gross estate was situated within the meaning of the statute in the United States.

Return required for estate of nonresident alien.—A return on this form is required for the estate of every nonresident alien of the United States (or nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) any part of whose gross estate was situated within the meaning of the statute in the United States. No specific exemption is authorized in the case of a nonresident alien (or nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934).

Time and place for filing return.—The return is due 1 year after the date of death. The return for the estate of a resident decedent must be filed with the collector in whose district the decedent had his domicile at the time of death. The return for the estate of a nonresident decedent must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate

in the United States was situated in more than one district, or, if in the case of a nonresident citizen who died after the enactment of the Revenue Act of 1934, no part of the gross estate was situated in the United States, it must be filed with the Collector for the Second District of New York, or with such collector as the Commissioner may designate.

Payment of tax.—The tax is due 1 year after the date of death and should be paid to the collector with whom the return is filed. Check or money order in payment of the tax should be made payable to "Collector of Internal Revenue at _____", naming city and State in which is located the office of the collector with whom the return is filed.

Gross estate.—In addition to property passing under a will or the intestate laws, the gross estate for the purpose of the estate tax includes, as more specifically explained hereinafter, certain transfers made during the decedent's life without an adequate and full consideration in money or money's worth, joint estates with right of survivorship, tenancies by the entirety, life insurance even though payable to beneficiaries other than the estate, property over which the decedent exercised a general power of appointment, and dower, curtesy or statutory estate in lieu thereof, of the surviving spouse.

Property situated in the United States.—In the case of the estate of a nonresident alien (or of a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) the statute reaches only property situated in the United States at the time of death, except that property transferred during the decedent's life and described under Schedule E is included if such property was situated in the United States either at the time of the transfer or at the time of death. The term "United States", when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia. Real estate and tangible personal property are situated in the United States if physically therein. Certificates of stock, bonds, bills, notes, and other written evidences of intangible property which are treated as being the property itself, are property situated in the United States if physically situated therein. Except certain insurance and bank deposits hereinafter described, intangible personal property has a situs in the United States if consisting of a property right issu-

ing from or enforceable against a corporation (public or private) organized in the United States or a person who is a resident of the United States, such as corporate stock issued by such a corporation, or a simple debt, bond, note, or other chose in action for which such a corporation or individual is liable. Under an express provision of the statute, proceeds of insurance upon the life of a nonresident alien (nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) and bank deposits of such decedent, who was not engaged in business in the United States at the time of his death, are not regarded as property in the United States.

Supplemental documents.—If the decedent was a resident and died testate, two copies of the will, one of them certified, must be filed.

If the decedent was a nonresident citizen who died after the enactment of the Revenue Act of 1934, the following documents must be filed with the return:

(1) A copy of the inventory of property and the schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of such court.

(2) A copy of the return filed under the foreign inheritance, estate, legacy, or succession tax act, certified by a proper official of the foreign tax department, if the estate is subject to such a foreign tax.

(3) If the decedent died testate, a certified copy of the will.

If the decedent was a nonresident alien (or a nonresident, regardless of citizenship, if he died prior to the enactment of the Revenue Act of 1934) the following documents must be filed:

(1) If deductions are claimed, certified copies of the inventory and schedule or a certified copy of the return, as described in the preceding subparagraphs (1) and (2).

(2) If the decedent died testate, a certified copy of the will.

Other supplemental documents may be required as hereinafter explained under the several schedules.

169 Execution of return.—The gross estate should be set forth under the appropriate Schedules A, B, C-1, C-2, D-1, D-2, E, F, and G. The deductions, except amounts claimed for the specific exemption and property previously taxed, should be shown under the appropriate Schedules H, I, J-1, J-2, and K. The amounts deducted

for the specific exemption and property previously taxed should be shown under Schedules M and N, or Schedule O. If the gross estate of a resident or citizen (resident only, if the decedent died prior to the enactment of the Revenue Act of 1934) exceeds $100,000, the net estate for the tax imposed by the Revenue Act of 1926 should be computed under Schedule M. The net estate for the additional tax imposed by the Revenue Act of 1932 on the estate of a resident or citizen (resident only, if the decedent died prior to the enactment of the Revenue Act of 1934) should be computed under Schedule N. The net estate for a nonresident alien (nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) should be computed under Schedule O.

The items should be numbered under each schedule and a separate enumeration should be used for each schedule. The grand total for each schedule should be shown at the bottom of the schedule. The grand totals should not be carried forward from one schedule to another, but the grand total for each schedule should be entered under the recapitulation, Schedule L.

The questions asked under each schedule should be specifically answered, and if the decedent owned no property of any class specified under the schedule, the word "None" should be written across the schedule.

If there is not sufficient space for all entries under any schedule use additional sheets of the same size, and insert in the proper order in the return.

The information as indicated on pages 1, 2, and 27 must also be supplied in the spaces provided.

If there is more than one executor or administrator, all must sign and swear to (or affirm) the return. The affidavit may be sworn to before any person authorized to administer oaths except the attorney or attorneys representing the taxpayer. If the officer has an official seal, such seal must be affixed.

If there is no executor or administrator appointed, qualified, and acting in the United States, every person in actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purposes of the tax (sec. 300 of the Revenue Act of 1926), and is liable for the filing of the return. If two or more persons are liable for the filing of the return, it is preferable for all to join in the filing of one complete return, but if they are unable to join in making one complete return, each is re-

quired to file a return disclosing all the information he has in the case, including the name of every person holding an interest in the property and a full description of such property. If the appointed, qualified, and acting executor or administrator is unable to make a complete return, the statute requires that every person holding an interest in the property, shall, upon notice from the collector, make a return as to such interest.

The person or persons that file the return must, in every case, execute the first affidavit on page 27. If the return is prepared by an attorney or agent for the person or persons filing this return, the second affidavit on page 27 must also be executed, and executed only by such attorney or agent. (Reference is made to sec. 2 (h) of Treasury Department Circular No. 230, revised, Oct. 1, 1934.)

If the taxpayer desires to be represented by an attorney by correspondence or otherwise, a power of attorney must be filed. For this purpose Form 711, obtainable from any collector, may be executed.

Valuation.—All property included in the gross estate should be valued as of the date of the decedent's death.

Penalties.—For penalties for failure to file return when due, keep records, and supply information, or for the preparation or presentation or the aiding or assisting in the preparation or presentation of a false or fraudulent return, affidavit, claim, or document, see sections 320, 1103, and 1114 of the Revenue Act of 1926. Reference is also made to section 616 of the Revenue Act of 1928.

Heirs, Next of Kin, Devisees, and Legatees.

(If more than five, only the names of the five principal ones are required.)

Name	Relationship	Address
Mrs. Agnes Wolf Stern	Niece	615 Crescent Court, Highland Park, Illinois
Mrs. Bertha Wolf Raymondaud	Niece	4 Square Petrarque Paris, France
Walter B. Wolf	Nephew	209 Lake Shore Drive, Chicago, Illinois
The Jewish Charities of Chicago	Charity	1800 West Selden Avenue Chicago, Illinois
Michael Reese Hospital of Chicago	Benevolent Organization	29th & Ellis Avenue Chicago, Illinois

Physicians and Attending Nurses.

Names and addresses of decedent's physicians:
Dr. Oliver S. Ormsby—25 East Washington Street, Chicago
Dr. Udo J. Wile—Ann Arbor, Michigan
Dr. Edwin M. Miller—700 North Michigan Avenue, Chicago

Names and addresses of physicians and nurses who attended decedent during last illness:
Physicians—as above and others
Bess Ann Logan—Presbyterian Hospital
Carolyn Lindquist—Presbyterian Hospital

(If more space is needed, insert additional sheets of same size)

170 **GROSS ESTATE.**

Schedule A.

Real Estate.

Instructions.

Real estate should be so described and identified that upon investigation by an internal revenue officer it may be readily located for inspection and valuation. For each parcel of real estate there should be given the area and, if the parcel is improved, a short statement of the character of the improvements. For city or town property state street and number, ward, subdivision, block and lot, etc. For rural property state township, range, landmarks, etc.

If any item of real estate is subject to mortgage, the unpaid balance of the mortgage should be shown below under "Description." The full value of the property and not the equity must be extended in the value column. The mortgage should be deducted under Schedule J-1 of this return.

Real property which the decedent has contracted to purchase should be listed in this schedule. The full value of the property and not the equity must be extended in the value column. The unpaid portion of the purchase price should be deducted under Schedule I of this return.

The value of dower, curtesy, or a statutory estate created in lieu thereof, is taxable, and no reduction on account thereof or on account of homestead or other exemptions, should be made in returning the value of the real estate.

All rents accrued and unpaid should be apportioned to the date of death, whether due at that time or not.

For further instructions see articles 10 to 13, inclusive, Regulations No. 80.

Did the decedent, at the time of death, own any real estate in the United States? (Answer "Yes" or "No."): Yes.

Item No.	Description	Assessed value for year of decedent's death	Fair market value at date of decedent's death	Rents accrued to date of death
		$	$	$
	See Attached Schedule			
	Totals	$	$	
	Grand Total (also enter under the Recapitulation, Schedule L)			$ 5,000.00

(If more space is needed, insert additional sheets of same size.)

Estate of Henry M. Wolf. Date of death June 4, 1935.

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Schedule A.

Real Estate.

Item No.	Description	Fair Market Value at Date of Death
1.	Lots Seventeen (17) and Eighteen (18) in Haywood's Subdivision of the West four-fifths (W 4/5ths) of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) of Section Thirty-four (34), Township Thirty-nine (39) North, Range Fourteen (14), East of the Third Principal Meridian, according to the plat of said Subdivision recorded April 22, A. D. 1857 in Book 133 of maps at page 18, together with all buildings and improvements thereon, situated in the City of Chicago, in the County of Cook in the State of Illinois. Title in fee simple to said real estate was acquired by the said Henry M. Wolf by Warranty Deed to him from Curtis L. Cruver and Addie J. Cruver, his wife, dated the Seventh (7) day of December, A. D. 1912, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on December 9, 1912, in Book 12157 of Records, at page 115, as Document Number 5094764, (conveying Lot 17), and by Warranty Deed to him from William M. Brinkman and Florence H. Brinkman, his wife, dated December 7, 1912, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on December 10, 1912, in Book 12094 of Records, at page 628, as Document Number 5095007 (conveying Lot 18).	

Item No.	Description	Fair Market Value at Date of Death
	Said real estate is unencumbered and is located at numbers 3115 and 3119 Indiana Avenue, Chicago, Illinois, and is subject to a lease dated the 31st day of December, 1924, between said Henry M. Wolf, as Lessor, and William M. Brinkman as Lessee, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on April 4, 1925, as Document Number 8845611, in Book 21093 of Records at page 459, for a term commencing on the 1st day of January, A. D. 1925 and ending on the 31st day of December, A. D. 2011, at a rental of $1,000. for each and every year of the entire term, payable in equal quarterly instalments on the 1st day of the months of January, April, July and October. This lease is in default.	
	Number 3115 Indiana Avenue of said real estate is improved with a three story brick building, containing one store and two flats; and number 3119 Indiana Avenue is improved with a two story stone and brick building containing one store and one flat.	
	Illinois Inheritance Tax Value	$5,400.00
172		
2.	An undivided one-half of the East one-half (E½) of Lot Forty-six (46) in Block Seven (7) in J. C. Robinson's Addition to Des Plaines, in the Township of Maine, in Cook County, Illinois.	
	Title in fee simple to said real estate was acquired by Warranty Deed dated January 19, 1893 from Moses Wolf, a widower, conveying to said Henry M. Wolf and the late Albert H. Wolf all of the said East one-half (E½) of Lot Forty-six (46), which deed was recorded in the Recorder's office of Cook County, Illinois on March 9, 1896, in Book 5586 of Records at page 453, as Document Number 2356280.	
	Said real estate is unencumbered, unoccupied, vacant and unimproved, and has no rental value, and has never been rented.	
	Note:—This is a vacant lot 25 feet front by 150 feet deep on the North side of Walnut Street near Lee Street, in the Village of Des Plaines, Cook County, Illinois.	
	Appraised Value	200.00
3.	An undivided one-half of the East one-half (E½) of Sublot Three (3) of Lot Two Hundred Eighty-seven (287) in Section L of Rosehill Cemetery, in Cook County, Illinois.	
	Title of said cemetery lot was acquired by deed from The Zion Congregation to Moses Wolf, dated December 9, 1889, and recorded in the Recorder's office of Cook County, Illinois, on July 17, 1922 in Book 17638 of Records at page 636 as Document Number 7377066. The said Moses Wolf died January 29, 1896, and title to said cemetery lots descended from him to his two sons, the late Albert H. Wolf and said Henry M. Wolf.	No Value
	Total—Schedule A	$5,600.00

173 SCHEDULE B.

Stocks and Bonds.

Instructions.

Description.—Description of stocks should include number of shares, whether common or preferred, issue, par value, price per share, exact name of corporation, and, if unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If listed, state principal exchange upon which sold. Description of bonds should include quantity and denomination, name of obligor, kind of bond, date of maturity, interest rate, and interest due dates. State the exchange upon which listed, or if unlisted, the principal business office of the company.

Examples:

Ten shares Public Service Corporation of New Jersey, 8 percent cumulative preferred, par $100, at 125, New York Exchange.

Ten shares Eagle Manufacturing Co., Red Bank, N. J., unlisted common, par $25, at 30, per Exhibit A, incorporated in New Jersey.

Ten $1,000 Baltimore & Ohio Railway Co., first mortgage 4 percent registered 50-year gold bonds, due 1948, January, April, July, and October, at 96, New York Exchange.

Valuation.—The value as of the date of death should be returned. Listed stocks and bonds should be returned at the mean between the highest and lowest selling prices on the date of death, or if there were no sales on the date of death, then at the mean between the highest and lowest sales on the nearest date thereto, if within a reasonable period. If death occurred on a Sunday or holiday, the quotations of the nearest previous day should be used. If listed on several exchanges, quotations of the principal exchange should be employed. Unlisted securities which are dealt in actively by brokers or have an active market should be returned at the sale price as of the date of death or the nearest date thereto, if within a reasonable period either before or after death. Only sales in the normal course of business should be employed. If sale prices are not available and the stock is quoted on a bid and asked basis, the mean of the bid and asked prices on the date of death, or

the nearest date thereto, where not quoted as of the date of death, should be taken. Inactive stock and stock in close corporations should be valued on the basis of the company's net worth, earning and dividend paying capacity, and all other relevant factors bearing on the value of the stock. Complete financial and other data upon which the estate bases its valuation should be submitted in duplicate with the return.

Securities returned as of no value, nominal value or obsolete, should be listed last, and the address of the company and the state and date of the incorporation should be stated. Correspondence or statements used as the basis for return at no value should be retained for inspection.

Interest and dividends.—Interest on bonds should be apportioned to the date of death and shown in the interest column. Dividends on stock declared prior to death, and payable after death to holders of record on or prior to the date of death, must be returned separately in the interest column unless reflected in the price at which the stock is returned.

Estate of nonresident alien.—In the case of an estate of a nonresident alien of the United States (or an estate of a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) stocks or bonds of either of the following two classes must be included hereunder: (1) Stocks or bonds of corporations organized in the United States, regardless of the situs of the certificates; and (2) stocks or bonds of corporations, whether domestic or foreign, if the stock certificates were situated in the United States at the time of the decedent's death. For example, a share of stock of a corporation organized in the United States must be included for tax in the estate of a nonresident alien even though the stock certificate was in England; and a share of stock of a corporation organized in England must be included in his estate if the stock certificate was in the United States at the time of death.

For further instructions, see articles 11, 12, 13, and 50 of Regulations No. 80.

(1) Did the decedent, if a resident or citizen of the United States (or a resident, regardless of citizenship, if death occurred prior to the enactment of the Revenue Act of 1934) own any stocks or bonds, regardless of situs, at the time of his death? (Answer "Yes" or "No.") Yes.

(2) Did the decedent, if a nonresident alien of the

United States (or a nonresident, regardless of citizenship, if death occurred prior to the enactment of the Revenue Act of 1934) own, at the time of his death, any stocks or bonds situated in the United States as explained in the above instructions? (Answer "Yes" or "No.") .....

174 Schedule B—Continued.

Item No.	Description	Fair market value at date of death	Interest or dividends
		$	$
	See Attached Schedule		
	Totals	$	$
	Grand Total		$
	Amounts carried forward.....	$	$

(Do not use this margin)

Estate of Henry M. Wolf. Date of death June 4, 1935.

175 Schedule B—Continued.

Item No.	Description	Fair market value at date of death	Interest or dividends
	Amounts brought forward	$	$
	See Attached Schedule		
	Totals	$	$
	Grand Total		$
	Amounts carried forward.....	$	$

(Do not use this margin)

Estate of Henry M. Wolf. Date of death June 4, 1935.

176 Schedule B—Continued.

Item No.	Description	Fair market value at date of death	Interest or dividends
	Amounts brought forward	$	$
	See Attached Schedule		
	Totals	$	$
	Grand Total		$
	Amounts carried forward	$	$

(Do not use this margin)

Estate of Henry M. Wolf. Date of death June 4, 1935.

177 Schedule B—Continued.

Item No.	Description	Fair market value at date of death	Interest or dividends
	Amounts brought forward	$	$
	See Attached Schedule		
	Totals	$	$
	Grand Total (also enter under the Recapitulation, Schedule L)		$ 3,706,633.22

(Do not use this margin)

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf. Date of death June 4, 1935.

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SCHEDULE B.

Jun. 23, 1936.

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
		United States Treasury Bonds & Notes		
	Bonds			
4.	$20,000	The United States of America Fourth Liberty Loan 4¼% Gold Bonds of 1933-1938, payable to bearer, principal due October 15, 1938, and called for payment October 15, 1935. Interest payable semi-annually April 15 and October 15, with interest coupon due October 15, 1935 and subsequent coupons attached. @ 102-1/32 N. Y. S. E.	20,406.25	113.33
5.	$ 4,900	The United States of America 3¾% Treasury Gold Bonds of 1941-43, payable to bearer, principal due March 15, 1943. Interest payable semi-annually, March 15 and September 15, with interest coupons due September 15, 1935 and subsequent coupons attached. @ 107-24/32 N. Y. S. E.	5,279.75	35.83
6.	$50,000	The United States of America 4¼%-3¼% Treasury Bonds of 1943-1945, payable to bearer, principal due October 15, 1945. Interest payable semi-annually April 15 and October 15, with interest coupon due October 15, 1935 and subsequent coupons attached on all the Bonds, (except Bonds Numbers 8206F, 8207H, 8208J, 80293C, 80294D, and 80295E for $1,000. each; 3280L and 8108J for $500. each; 6330L, 6331A, 53816F, and 53817H for $100. each; 2639K and 4248J for $50. each, which have interest coupon due April 15, 1935 and subsequent coupons attached). @ 105-24/32 N. Y. S. E.	52,875.00	338.54
179				
7.	$52,700	The United States of America 3¼% Treasury Bonds of 1944-1946, payable to bearer, principal due April 15, 1946. Interest payable semi-annually April 15 and October 15, with interest coupon due October 15, 1935 and subsequent coupons attached on all the Bonds, (except Bond Numbers 6355E for $5,000., which has interest coupon due April 15, 1935 and subsequent coupons attached). @ 105-22/32 N. Y. S. E.	55,697.31	309.62
8.	$33,000	The United States of America 4¼% Treasury Gold Bonds of 1947-1952, payable to bearer; principal due October 15, 1952. Interest payable semi-annually April 15 and October 15, with interest coupon due October 15, 1935 and subsequent coupons attached. @116-29/64 N. Y. S. E.	38,429.53	187.00

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
9.	$30,000	The United States of America 4% Treasury Gold Bonds of 1944-1954, payable to bearer, principal due December 15, 1954. Interest payable semi-annually June 15 and December 15, with interest coupons due June 15, 1935 and subsequent coupons attached. @ 111-11/32 N. Y. S. E.	33,403.12	500.00
10.	$52,100	The United States of America 2⅞% Treasury Bonds of 1955-1960, payable to bearer, principal due March 15, 1960. Interest payable semi-annually March 15 and September 15, with interest coupon due September 15, 1935 and subsequent coupons attached. @ 101-9/32 N. Y. S. E.	52,767.53	324.54
11.	$50,000	The United States of America 3¼% Treasury Series A-1936 Gold Notes, payable to bearer, principal due August 1, 1936. Interest payable semi-annually February 1 and August 1, with interest coupon due August 1, 1935 and subsequent coupons attached. @ 103-20/32 N. Y. S. E.	51,812.50	555.21
180				
12.	$80,000	The United States of America, 3¼% Treasury Series A-1937 Gold Notes, payable to bearer, principal due September 15, 1937. Interest payable semi-annually March and September 15, with interest coupon due September 15, 1935 and subsequent coupons attached. @ 105-31/32 N. Y. S. E.	84,774.96	563.33
13.	$77,000	The United States of America 3% Treasury Series A-1935 Gold Notes, payable to bearer, principal due June 15, 1935. Interest payable semi-annually June 15 and December 15, with interest coupon due June 15, 1935 attached. @ 100-22/32 N. Y. S. E.	77,529.37	1,078.00
14.	$15,000	The United States of America 3% Treasury Series B-1937 Gold Notes, payable to bearer, principal due April 15, 1937. Interest payable semi-annually April 15 and October 15, with interest coupon due October 15, 1935 and subsequent coupons attached on all the Notes, (except Note Numbers 361A for $1,000, and 188J for $500, which have interest coupon due April 15, 1935 and subsequent coupons attached). @ 104-30/32 N. Y. S. E.	15,740.62	82.50
15.	$100,000	The United States of America 3% Treasury Series C-1938 Note, payable to bearer, principal due March 15, 1938. Interest payable semi-annually March 15 and September 15, with interest coupon due September 15, 1935 and subsequent coupons attached. @ 105-31/32 N. Y. S. E.	105,968.75	650.00

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
16.	$105,000	The United States of America 2⅛% Treasury Series B-1938, Notes, payable to bearer, principal due June 15, 1938. Interest payable semi-annually June 15 and December 15, with interest coupon due June 15, 1935 and subsequent coupons attached. @ 106-26/32 N. Y. S. E.	111,103.12	1,408.75
181				
17.	$38,600	The United States of America 2¾% Treasury Series B-1936 Gold Notes, payable to bearer, principal due December 15, 1936. Interest payable semi-annually June 15 and December 15, with interest coupon due June 15, 1935 and subsequent coupons attached. @ 103-30/32 N. Y. S. E.	40,119.87	495.37
18.	$62,400	The United States of America 2⅝% Treasury Series A-1938 Gold Notes, payable to bearer, principal due February 1, 1938. Interest payable semi-annually February 1 and August 1, with interest coupon due August 1, 1935 and subsequent coupons attached. @ 104-30/32 N. Y. S. E.	65,481.00	559.65
19.	$75,000	The United States of America 2⅛% Treasury Series A-1939 Notes, payable to bearer, principal due June 15, 1939. Interest payable semi-annually June 15 and December 15, within interest coupon due June 15, 1935 and subsequent coupons attached. @ 103-7/32 N. Y. S. E.	77,414.06	743.75
20.	$414,000	The United States of America 1⅝% Treasury Series A-1940 Notes, payable to bearer, principal due March 15, 1940. Interest payable semi-annually March 15 and September 15, with interest coupon due September 15, 1935 and subsequent coupons attached. @ 101-7/32 N. Y. S. E.	419,045.62	1,457.64
		State Obligations		
21.	$10,000	State of Illinois 4½% Relief Bonds, payable to bearer, principal due December 15, 1942. Interest payable annually December 15 with interest coupon due December 15, 1935 and subsequent coupons attached. @ 114½ The Northern Trust Company	11,450.00	210.00
182				
22.	$5,000	State of Illinois State Highway 4% Bonds, payable to bearer, principal due March 1, 1937. Interest payable annually March 1, with interest coupon due March 1, 1936 and subsequent coupon attached. @ 104⅝ First of Boston Corp.	5,231.25	51.67

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
23.	$5,000	State of Illinois Highway 4% Bonds, Act of 1923, payable to bearer, principal due March 1, 1949. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached. @ 113¼ Brown Bros. Harriman & Co.	5,662.50	51.67
24.	$4,000	State of Illinois Highway 4% Bonds, Act of 1923, payable to bearer, principal due March 1, 1952. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached. @ 115⅛ Brown Bros. Harriman & Co.	4,605.00	41.33
25.	$5,000	State of Illinois 4% Highway Bonds, payable to bearer, principal due March 1, 1953. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached. @ 115⅛ The Northern Trust Co.	5,756.25	51.67
26.	$17,000	State of Illinois Highway 4% Bonds, Act of 1923, payable to bearer, principal due March 1, 1954. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached. @ 115½ Brown Bros. Harriman & Co.	19,635.00	175.67
27.	$45,000	State of Illinois 3½% Relief Bonds, payable to bearer, principal due December 15, 1946. Interest payable annually December 15, with interest coupon due December 15, 1935 and subsequent coupons attached. @ 105 Brown Bros. Harriman & Co.	47,250.00	682.50
183				
28.	$40,000	State of Illinois 3½% Relief Bonds, payable to bearer, principal due December 15, 1947. Interest payable annually December 15, with interest coupon due December 15, 1935 and subsequent coupons attached. @ 104¾ Brown Bros. Harriman & Co.	41,950.00	606.67
29.	$10,000	State of Minnesota Rural Credit 4½% Bonds, payable to bearer, principal due June 1, 1954. Interest payable semi-annually June 1 and December 1, with interest coupon due December 1, 1935 and subsequent coupons attached. @ 119 Brown Bros. Harriman & Co.	11,900.00	3.75
30.	$15,000	State of Minnesota 4½% Rural Credit Bonds, payable to bearer, principal due February 15, 1944. Interest payable semi-annually February 15 and August 15 with interest coupon due August 15, 1935 and subsequent coupons attached. @ 110⅞% Brown Bros. Harriman & Co.	16,631.25	191.25

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
31.	$10,000	State of Minnesota 4½% Rural Credit Bonds, payable to bearer, principal due June 1, 1954. Interest payable semi-annually June 1 and December 1, with interest coupon due December 1, 1935 and subsequent coupons attached. @ 115⅝ Brown Bros. Harriman & Co.....	11,537.50	3.54
32.	$10,000	State of Minnesota 4% Rural Credit Bonds, payable to bearer, principal due December 15, 1943. Interest payable semi-annually June 15 and December 15, with interest coupon due June 15, 1935 and subsequent coupons attached. @ 109¼ Brown Bros. Harriman & Co.....	10,925.00	186.67
33.	$20,000	State of Michigan 4% Highway Improvement Bonds, payable to bearer, principal due September 15, 1944. Interest payable semi-annually March 15, and September 15, with interest coupon due September 15, 1935 and subsequent coupons attached. @ 112¼ Brown Bros. Harriman & Co.....	22,450.00	173.33
184				
34.	$27,000	City of Chicago, Illinois 5½% Refunding Bonds of 1934, Series B, payable to bearer, principal due January 1, 1940. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached. @ 100 First of Boston Corp.....	27,000.00	631.12
35.	$25,000	Board of Education of the City of Chicago, Illinois, 4½% Revolving Fund Bonds of 1934, payable to bearer, principal due August 1, 1954, (redeemable August 1, 1944). Interest payable semi-annually February 1 and August 1, with interest coupon due August 1, 1935 and subsequent coupons attached. @ 109½ Brown Bros. Harriman & Co.....	27,375.00	384.37
36.	$1,000	City of Chicago, Illinois, Ashland Avenue Street Improvement 4% Bond, payable to bearer, principal due January 1, 1936. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupon attached. @ 101¼ Brown Bros. Harriman & Co.....	1,012.50	17.00
37.	$5,000	City of Chicago, Illinois, Board of Education Revolving Fund of 1930 4% Bonds, payable to bearer, principal due January 1, 1936. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupon attached. @ 104 The Northern Trust Co.....	5,200.00	85.00

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
38.	$20,000	Board of Education of the City of Chicago, Illinois, 4% Revolving Fund of 1931 Bonds, payable to bearer, principal due January 1, 1936. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupon attached.		
		@ 101¼ Brown Bros. Harriman & Co.....	20,250.00	340.00
185				
39.	$7,000	City of Chicago Illinois, 4% Indianapolis Avenue Bonds, payable to bearer, principal due January 1, 1940. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached.		
		@ 104¼ Brown Bros. Harriman & Co.....	7,297.50	119.00
40.	$10,000	City of Chicago, Illinois 4% Judgment Funding Bonds, payable to bearer, principal due January 1, 1939. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached.		
		@ 104 First of Boston Corp.....	10,400.00	170.00
41.	$2,000	City of Chicago, Illinois, North La Salle Street Improvement 4% Bonds, payable to bearer, principal due January 1, 1938. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached.		
		@ 103 The Northern Trust Co.....	2,060.00	34.00
42.	$5,000	City of Chicago, Illinois, North and South Ashland Avenue Improvement 4% Bonds, payable to bearer, principal due January 1, 1936. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupon attached.		
		@ 101¼ The Northern Trust Co.....	5,062.50	85.00
43.	$3,000	City of Chicago, Illinois, North and South Western Avenue Improvement 4% Bonds, payable to bearer, principal due January 1, 1945. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached.		
		@ 104¼ The Northern Trust Co.....	3,127.50	51.00
44.	$7,000	City of Chicago, Illinois, Roosevelt Road Bridge and Viaduct Construction, 4% Bonds, payable to bearer, principal due January 1, 1936. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached.		
		@ 101¼ Brown Bros. Harriman & Co.....	7,087.50	119.00

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
186				
45.	$15,000	City of Chicago, Illinois, South Water Street Improvement 4% Bonds, payable to bearer, principal due January 1, 1936. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupon attached. @ 101¼ Brown Bros. Harriman & Co.....	15,187.50	255.00
46.	$30,000	City of Chicago, Illinois, South Water Street Improvement 4% Bonds, payable to bearer, principal due January 1, 1939. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupon attached. @ 104 First of Boston Corp.....	31,200.00	510.00
47.	$2,000	City of Chicago, Illinois 4% Street Lighting System Bonds, payable to bearer, principal due January 1, 1939. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached. @ 104 First of Boston Corp.....	2,080.00	34.00
48.	$5,000	City of Chicago, Illinois Twelfth Street Viaduct 4% Bonds, payable to bearer, principal due January 1, 1936. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupon attached. @ 101¼ Brown Bros. Harriman & Co.....	5,062.50	85.00
49.	$10,000	The Commissioners of Lincoln Park of Chicago, Illinois 6% Refunding Bonds, Series 1933, Under Vote of February 28, 1933, payable to bearer, principal due April 1, 1943. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupons attached. @ 110 First of Boston Corp.....	11,000.00	105.00
187				
50.	$50,000	The Commissioners of Lincoln Park of Chicago, Illinois, Park Improvement Series B 4½% Bonds, Under Vote of November 4, 1930, payable to bearer, principal due May 1, 1938. Interest payable semi-annually May 1 and November 1, with interest coupon due November 1, 1935 and subsequent coupons attached. @ 101 Brown Bros. Harriman & Co.....	50,500.00	206.25
51.	$25,000	The Commissioners of Lincoln Park of Chicago, Illinois, 4½% Park Improvement Series B. Bonds, payable to bearer, principal due May 1, 1941. Interest payable semi-annually May 1 and November 1, with interest coupon due November 1, 1935 and subsequent coupons attached. @ 101½ The Northern Trust Co.....	25,375.00	103.12

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
52.	$10,000	The Sanitary District of Chicago, Illinois, 4½% Municipal Bonds, payable to bearer, principal due August 1, 1938. Interest payable semi-annually February 1 and August 1, with interest coupon due August 1, 1935 and subsequent coupons attached. @ 97⅞ (Flat) Brown Bros. Harriman & Co...	9,887.50	
53.	$20,000	Balance unpaid $14,600. The Sanitary District of Chicago, Illinois, 4¼% Municipal Bonds, payable to bearer, principal due May 1, 1933. Interest payable semi-annually May 1 and November 1, with no interest coupons attached. @ 97⅞ (Flat) Brown Bros. Harriman & Co...	14,289.75	
54.	$20,000	Balance unpaid $9,000. The Sanitary District of Chicago, Illinois, 4¼% Municipal Bonds, payable to bearer, principal due December 1, 1933. Interest payable semi-annually June 1 and December 1, with no interest coupons attached. @ 98⅛ (Flat) Brown Bros. Harriman & Co...	8,898.75	
188				
55.	$ 5,000	Balance unpaid $1,250. The Sanitary District of Chicago, Illinois, 4% Municipal Bonds, payable to bearer, principal due April 1, 1932. Interest payable semi-annually April 1 and October 1, with no interest coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	1,215.62	
56.	$11,000	Balance unpaid $8,030. The Sanitary District of Chicago, Illinois, 4% Municipal Bonds, payable to bearer, principal due July 1, 1932. Interest payable semi-annually January 1 and July 1, with no interest coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	7,809.17	
57.	$25,000	Balance unpaid $18,250. The Sanitary District of Chicago, Illinois, 4% Municipal bonds, payable to bearer, principal due April 1, 1933. Interest payable semi-annually April 1 and October 1, with no interest coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	17,748.12	
58.	$ 1,000	Balance unpaid $450. The Sanitary District of Chicago, Illinois, 4% Municipal Bond, payable to bearer, principal due December 1, 1933. Interest payable semi-annually June 1 and December 1, with no interest coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	437.62	
59.	$25,000	Balance unpaid $11,250. The Sanitary District of Chicago, Illinois, 4% Municipal Bonds, payable to bearer, principal due April 1, 1934. Interest payable semi-annually April 1 and October 1, with no interest coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	10,940.62	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
60.	$ 5,000	The Sanitary District of Chicago, Illinois, 4% Municipal Bonds, payable to bearer, principal due December 1, 1935. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupon attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	4,862.50	100.00
189				
61.	$ 5,000	The Sanitary District of Chicago, Illinois, 4%, Municipal Bonds, payable to bearer, principal due April 1, 1936. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935, and subsequent coupon attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	4,862.50	
62.	$10,000	The Sanitary District of Chicago, Illinois, 4% Municipal Bonds, payable to bearer, principal due April 25, 1936. Interest payable semi-annually April 25 and October 25, with interest coupon due October 25, 1935 and subsequent coupon attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	9,725.00	
63.	$25,000	The Sanitary District of Chicago, Illinois, 4% Municipal Bonds, payable to bearer, principal due March 1, 1937. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	24,312.50	
64.	$32,000	The Sanitary District of Chicago, Illinois, 4% Municipal Bonds, payable to bearer, principal due July 1, 1937. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	31,120.00	
65.	$20,000	The Sanitary District of Chicago, Illinois, 4% Bonds, payable to bearer, principal due January 1, 1937. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	19,450.00	
66.	$18,000	The Sanitary District of Chicago, Illinois, 4% Municipal Bonds, payable to bearer, principal due April 1, 1959. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	17,505.00	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
190				
67.	$10,000	The Sanitary District of Chicago, Illinois, 4% Bonds, payable to bearer, principal due July 1, 1942. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	9,725.00	
68.	$ 2,000	The Sanitary District of Chicago, Illinois, 4% Municipal Bonds, payable to bearer, principal due July 1, 1943. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached. @ 97¼ (Flat) Brown Bros. Harriman & Co...	1,945.00	
69.	$10,000	South Park Commissioners of Chicago, Illinois, Park Improvement 4% Bonds, payable to bearer, principal due July 15, 1936. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 and subsequent coupons attached. @ 100⅛ The Northern Trust Co.....	10,012.50	153.33
70.	$ 5,000	South Park Commissioners of Chicago, Illinois, Stadium Completion 4% Bonds, Second Issue, payable to bearer, principal due January 2, 1942. Interest payable semi-annually January 2 and July 2, with interest coupon due July 2, 1935 and subsequent coupons attached. @ 100⅛ The Northern Trust Co.....	5,006.25	84.44
71.	$ 5,000	South Park Commissioners, of Chicago, Illinois, 4% Stadium Construction Bonds, Under Vote of February 24, 1920, Third Issue, payable to bearer, principal due July 1, 1935. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 attached. @ 100⅛ Brown Bros. Harriman & Co.....	5,006.25	65.00
191				
72.	$10,000	South Park Commissioners, of Chicago, Illinois, 4% Grant Park Improvement Bonds, Under Vote of April 3, 1923, First Issue, payable to bearer, principal due October 1, 1936. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupons attached. @ 100⅛ Brown Bros. Harriman & Co.....	10,012.50	70.00

	Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
$25,000	South Park Commissioners, of Chicago, Illinois, 4% Lake Front Extension Bonds, Under Vote of April 3, 1923, Fourth Issue, payable to bearer, principal due August 2, 1937. Interest payable semi-annually February 2 and August 2, with interest coupon due August 2, 1935 and subsequent coupons attached.		
	@ 100¼ Brown Bros. Harriman & Co.....	25,031.25	338.89
$ 2,000	South Park Commissioners, of Chicago, Illinois, 4% Park Improvement Bonds, Under Vote of February 24, 1920, Third Issue, payable to bearer, principal due April 1, 1938. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupons attached.		
	@ 100¼ Brown Bros. Harriman & Co.....	2,002.50	14.00
$12,000	South Park Commissioners, of Chicago, Illinois, 4% Park Improvement Bonds, under Vote of February 24, 1920, Third Issue, payable to bearer, principal due April 1, 1939. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupons attached.		
	@ 100¼ Brown Bros. Harriman & Co.....	12,015.00	84.00
$20,000	South Park Commissioners of Chicago, Illinois, 4% Lake Front Extension Bonds, under Vote of April 3, 1923, First issue, payable to bearer, principal due June 1, 1939. Interest payable semi-annually June 1 and December 1, with interest coupons due December 1, 1935 and subsequent coupons attached.		
	@ 100¼ Brown Bros. Harriman & Co.....	20,025.00	6.67
$50,000	South Park Commissioners, of Chicago, Illinois, 4% Grant Park Improvement Bonds, under Vote of February 24, 1920, Second Issue, payable to bearer, Principal due July 1, 1939. Interest payable semi-annually January 1 and July 1 with interest coupon due July 1, 1935 and subsequent coupons attached.		
	@ 100¼ Brown Bros. Harriman & Co.....	50,062.50	850.00
$25,000	South Park Commissioners, of Chicago, Illinois, 4% Park Improvement Bonds of 1930, payable to bearer, principal due July 15, 1939. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 and subsequent coupons attached.		
	@ 100¼ Brown Bros. Harriman & Co.....	25,031.25	383.33

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
79.	$ 6,000	South Park Commissioners, of Chicago, Illinois, 4% Park Improvement Bonds, under Vote of February 24, 1920, Third Issue, payable to bearer, principal due April 1, 1940. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupons attached. @ 100¼ Brown Bros. Harriman & Co.....	6,007.50	42.00
80.	$10,000	South Park Commissioners, of Chicago, Illinois, 4% Park Improvement Bonds, Under Vote of April 3, 1923, Second Issue, payable to bearer, principal due July 1, 1940. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached. @ 100⅛ Brown Bros. Harriman & Co.....	10,012.50	170.00
81.	$10,000	South Park Commissioners, of Chicago, Illinois, 4% Stadium Completion Bonds, under Vote of November 4, 1924, Second Issue, payable to bearer, principal due August 2, 1941. Interest payable semi-annually February 2 and August 2, with interest coupon due August 2, 1935 and subsequent coupons attached. @ 100⅛ Brown Bros. Harriman & Co.....	10,012.50	135.56
193				
82.	$ 5,000	South Park Commissioners, of Chicago, Illinois, 4% Park Improvement Bonds, Under Vote of February 24, 1920, Third Issue, payable to bearer, principal due April 1, 1942. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupons attached. @ 100⅛ Brown Bros. Harriman & Co.....	5,006.25	35.00
83.	$10,000	South Park Commissioners, of Chicago, Illinois, 4% Columbian Fine Arts Building Bonds, under Vote of June 2, 1924, First Issue, payable to bearer, principal due June 1, 1942. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached. @ 100⅛ Brown Bros. Harriman & Co.....	10,012.50	203.33
84.	$ 5,000	South Park Commissioners, of Chicago, Illinois, 4% Lake Front Extension Bonds, Under Vote of February 24, 1920, Fourth Issue, payable to bearer, principal due February 1, 1943. Interest payable semi-annually February 1, and August 1, with interest coupon due August 1, 1935 and subsequent coupons attached. @ 100⅛ Brown Bros. Harriman & Co.....	5,006.25	68.33

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
85.	$ 6,000	South Park Commissioners, of Chicago, Illinois, 4% Stadium Construction Bonds, Under Vote of February 24, 1920, Second Issue, payable to bearer, principal due April 1, 1943. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupons attached.		
		@ 100⅛ Brown Bros. Harriman & Co.....	6,007.50	42.00
86.	$10,000	West Chicago Park Commissioners 4¼% Park Improvement Bonds, payable to bearer, principal due September 1, 1933. Interest payable semi-annually March 1 and September 1, with interest coupon due March 1, 1932 and subsequent coupons attached.		
		@ 100 (Flat) Brown Bros. Harriman & Co...	10,000.00	
194				
87.	$19,000	West Chicago Park Commissioners Park 4½% Bonds, issued under Vote of November 6, 1923, payable to bearer, principal due January 1, 1934. Interest payable semi-annually January 1 and July 1, with interest coupon due January 1, 1932 and subsequent coupons attached.		
		@ 100 (Flat) Brown Bros. Harriman & Co...	19,000.00	
88.	$15,000	West Chicago Park Commissioners Park 4½% Bonds, Issue under Vote of November 6, 1923, payable to bearer, principal due January 1, 1935. Interest payable semi-annually January 1 and July 1, with interest coupon due January 1, 1932 and subsequent coupons attached.		
		@ 100 (Flat) Brown Bros. Harriman & Co...	15,000.00	
89.	$15,000	West Chicago Park Commissioners Park 4½% Bonds, Issue under Vote of November 6, 1923, payable to bearer, principal due January 1, 1936. Interest payable semi-annually January 1 and July 1, with interest coupon due January 1, 1932 and subsequent coupons attached.		
		@ 100 (Flat) Brown Bros. Harriman & Co...	15,000.00	
90.	$ 5,000	West Chicago Park Commissioners Park 4½% Bonds, Issued under Vote of November 6, 1923, payable to bearer, principal due January 1, 1937. Interest payable semi-annually January 1 and July 1, with interest coupon due January 1, 1932 and subsequent coupons attached.		
		@ 100 (Flat) Brown Bros. Harriman & Co...	5,000.00	
91.	$10,000	West Chicago Park Commissioners Park Improvement 4¼% Bonds of 1930, payable to bearer, principal due September 1, 1938. Interest payable semi-annually March 1 and September 1, with interest coupon due March 1, 1932 and subsequent coupons attached.		
		@ 99 (Flat) Brown Bros. Harriman & Co....	9,900.00	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
195				
92.	$10,000	West Chicago Park Commissioners Park Improvement 4¼% Bonds of 1930, payable to bearer, principal due September 1, 1939. Interest payable semi-annually March 1 and September 1, with interest coupon due March 1, 1932 and subsequent coupons attached. @ 99 (Flat) Brown Bros. Harriman & Co.....	9,900.00	
93.	$10,000	West Chicago Park Commissioners Park Improvement 4¼% Bonds of 1930, payable to bearer, principal due September 1, 1937. Interest payable semi-annually March 1 and September 1, with interest coupon due March 1, 1932 and subsequent coupons attached. @ 99 (Flat) Brown Bros. Harriman & Co.....	9,900.00	
94.	$ 5,000	West Chicago Park Commissioners Park Improvement 4¼% Bonds of 1930, payable to bearer, principal due September 1, 1935. Interest payable semi-annually March 1 and September 1, with interest coupon due March 1, 1932 and subsequent coupons attached. @ 99 (Flat) Brown Bros. Harriman & Co....	4,950.00	
95.	$ 2,000	West Chicago Park Commissioners Park Improvement 4% Bonds, for the Completion, Improvement and Maintenance of Public Parks, Boulevards and Pleasureways, Issued Under Vote of June 7, 1915, payable to bearer, principal due July 1, 1932. Interest payable semi-annually January 1 and July 1, with interest coupon due January 1, 1932 and subsequent coupon attached. @ 98 (Flat) Brown Bros. Harriman & Co.....	1,960.00	
96.	$60,000	West Chicago Park Commissioners Park Improvement 4% Bonds, Under Vote of June 6, 1927. ($20,000 are of the First Issue and $40,000 are of the Third Issue), payable to bearer, principal due July 1, 1933. Interest payable semi-annually January 1 and July 1, with interest coupon due January 1, 1932 and subsequent coupons attached. @ 98 (Flat) Brown Bros. Harriman & Co.....	58,800.00	
196				
97.	$45,000	West Chicago Park Commissioners Park Improvement 4% Bonds, under Vote of June 6, 1927, Second Issue, payable to bearer, principal due November 1, 1934. Interest payable semi-annually May 1 and November 1, with interest coupon due November 1, 1931 and subsequent coupons attached. @ 98 (Flat) Brown Bros. Harriman & Co.....	44,100.00	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
98.	$20,000	West Chicago Park Commissioners Park Improvement 4% Bonds, under Vote of June 6, 1927, Second Issue, payable to bearer, principal due November 1, 1936. Interest payable semi-annually May 1 and November 1, with interest coupon due November 1, 1931 and subsequent coupons attached. @ 98 (Flat) Brown Bros. Harriman & Co.....	19,600.00	
		COOK COUNTY OBLIGATIONS		
99.	$5,000	Cook County, Illinois, 4% Cook County Hospital Nurses' Dormitory Bonds, payable to bearer, principal due December 1, 1939. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	4,925.00	100.00
100.	$5,000	Cook County, Illinois, 4% Cook County Hospital Nurses' Dormitory Bonds, payable to bearer, principal due December 1, 1936. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	4,925.00	100.00
101.	$5,000	Balance unpaid $2,750. Forest Preserve District of Cook County, Illinois, 4%, Series N Bonds, payable to bearer, principal due December 1, 1933. Interest payable semi-annually June 1 and December 1, with no interest coupons attached. @ 98¼ (Flat) Brown Bros. Harriman & Co...	2,701.87	
197				
102.	$20,000	Balance unpaid $18,000. Forest Preserve District of Cook County, Illinois, Series O 4% Bonds, payable to bearer, principal due January 15, 1935. Interest payable January 15 and July 15, with no interest coupons attached. @ 98¼ (Flat) Brown Bros. Harriman & Co...	17,685.00	
103.	$20,000	Cook County, Illinois 4% Series T Court House & Jail Bonds, payable to bearer, principal due June 1, 1934. Interest payable semi-annually June 1 and December 1, with no interest coupons attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	19,700.00	
104.	$25,000	Cook County, Illinois, 4% Series T Court House & Jail Bonds, payable to bearer, principal due June 1, 1935. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	24,625.00	

Item No.		Description	Value at Value at Date of Death	Interest Interest or Dividends
105.	$25,000	Cook County, Illinois, 4% Series T Court House & Jail Bonds, payable to bearer, principal due June 1, 1936. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	24,625.00	
106.	$3,000	Balance Unpaid $3,000. Cook County, Illinois, 4% Series U Hospital Bonds, payable to bearer, principal due June 1, 1932. Interest payable semi-annually June 1 and December 1, with no interest coupons attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	2,955.00	
107.	$10,000	Cook County, Illinois, 4% Series U Hospital Bonds, payable to bearer, principal due June 1, 1936. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	9,850.00	
198				
108.	$25,000	The County of Cook, Illinois, 4% Road and Bridge Series V Bonds, payable to bearer, principal due June 1, 1941. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1934 and subsequent coupons attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	24,625.00	1,500.00
109.	$30,000	The County of Cook, Illinois, 4% Court House and Jail, Series W Bonds, payable to bearer, principal due June 1, 1935. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1934 and subsequent coupons attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	29,550.00	1,800.00
110.	$40,000	The County of Cook, Illinois, 4% Series Z Revolving Fund Bonds, payable to bearer, principal due February 1, 1940. Interest payable semi-annually February 1 and August 1, with interest coupon due August 1, 1935 and subsequent coupons attached. @ 98½ (Flat) Brown Bros. Harriman & Co...	39,400.00	
111.	$1,000	Forest Preserve District of Cook County, Illinois, 4% Series B Bond, payable to bearer, principal due September 1, 1935. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 attached. @ 98¼ (Flat) Brown Bros. Harriman & Co...	982.50	
112.	$4,000	Forest Preserve District of Cook County, Illinois, 4% Series D Bonds, payable to bearer, principal due February 1, 1936. Interest payable semi-annually February 1 and August 1, with interest coupon due August 1, 1935 and subsequent coupon attached. @ 98¼ (Flat) Brown Bros. Harriman & Co...	3,930.00	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
199				
113.	$10,000	Forest Preserve District of Cook County, Illinois, 4% Series F Bonds, payable to bearer, principal due June 1, 1935. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 attached. @ 98¼ (Flat) Brown Bros. Harriman & Co...	9,825.00	
114.	$ 4,000	Forest Preserve District of Cook County, Illinois, 4% Series F. Bonds, payable to bearer, principal due June 1, 1937. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached. @ 98¼ (Flat) Brown Bros. Harriman & Co...	3,930.00	
115.	$ 5,000	Forest Preserve District of Cook County, Illinois, 4½% Series J Bonds, payable to bearer, principal due July 15, 1935. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 attached. @ 100 (Flat) First of Boston Corp.....	5,000.00	
116.	$ 2,000	Forest Preserve District of Cook County, Illinois, Series J 4½% Bonds, payable to bearer, principal due July 15, 1936. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 and subsequent coupons attached. @ 99 (Flat) First of Boston Corp.....	1,980.00	
117.	$ 5,000	Forest Preserve District of Cook County, Illinois, 4½% Series J. Bonds, payable to bearer, principal due July 15, 1941. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 and subsequent coupons attached. @ 100 (Flat) First of Boston Corp.....	5,000.00	
200				
118.	$20,000	Forest Preserve District of Cook County, Illinois, 4½% Series J Bonds, payable to bearer, principal due July 15, 1942. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 and subsequent coupons attached. @ 100 (Flat) First of Boston Corp.....	20,000.00	
119.	$ 3,000	Forest Preserve District of Cook County, Illinois, Series L 4% Bonds, payable to bearer, principal due February 15, 1939. Interest payable semi-annually February 15 and August 15, with interest coupon due August 15, 1935 and subsequent coupons attached. @ 98¼% (Flat) Brown Bros. Harriman & Co.	2,947.50	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
120.	$ 5,000	Forest Preserve District of Cook County, Illinois, Series N 4% Bonds, payable to bearer, principal due December 1, 1937. Interest payable semi-annually June 1 and December 1, with interest coupons attached. @ 98¼ (Flat) Brown Bros. Harriman & Co...	4,912.50	
121.	$40,000	Forest Preserve District of Cook County, Illinois, Series N 4% Bonds, payable to bearer, principal due December 1, 1938. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached. @ 98¼ (Flat) Brown Bros. Harriman & Co...	39,300.00	
122.	$20,000	Forest Preserve District of Cook County, Illinois, 4% Series O Bonds, payable to bearer, principal due January 15, 1937. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 and subsequent coupons attached. @ 98¼ (Flat) Brown Bros. Harriman & Co....	19,650.00	
201				
123.	$20,000	Forest Preserve District of Cook County, Illinois, 4% Series O Bonds, payable to bearer, principal due January 15, 1936. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 and subsequent coupon attached. @ 98¼ (Flat) Brown Bros. Harriman & Co...	19,650.00	
		OTHER MUNICIPAL OBLIGATIONS.		
124.	$16,000	City of Champaign, Illinois Subway 4½% Bonds, payable to bearer, principal due as follows: 8M 4/1/36; 8M 4/1/37. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupon attached. @ 102⅝ First of Boston Corp.....	16,420.00	120.00
125.	$ 5,000	City of Cleveland, Ohio 4¼% City's Portion Paving and Sewer Bonds, payable to bearer, principal due October 1, 1935. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 attached. @ 100 First of Boston Corp.....	5,000.00	37.19
126.	$ 5,000	City of Des Moines, Iowa; 4½% Funding Bonds, payable to bearer, principal due July 15, 1936. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 and subsequent coupons attached. @ 103⅝ Brown Bros. Harriman & Co.....	5,181.25	86.25

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
127.	$ 5,000	City of Des Moines, Iowa, 4½% Funding Bonds, payable to bearer, principal due July 15, 1935. Interest payable semi-annually January 15 and July 15, with interest coupon due July 15, 1935 attached.		
		@ 100 Brown Bros. Harriman & Co.....	5,000.00	86.25
202				
128.	$20,000	Independent School District of Des Moines, Iowa, School Building 4¼% Bonds, payable to bearer, principal due August 1, 1944. Interest payable semi-annually February 1 and August 1, with interest coupon due August 1, 1935 and subsequent coupons attached.		
		@ 110¾ Brown Bros. Harriman & Co.....	22,175.00	290.42
129.	$10,000	Independent School District of Des Moines, Iowa, School Building 4% Bonds, payable to bearer, principal due September 1, 1945. Interest payable semi-annually March 1, and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached.		
		@ 109⅞ Brown Bros. Harriman & Co.....	10,987.50	108.33
130.	$10,000	City of Detroit, Michigan, 4¼% Various Public Improvement Refunding Series A Bonds, payable to bearer, principal due December 15, 1947. Interest payable semi-annually June 15 and December 15, with interest coupons due June 15, 1935 and subsequent coupons attached.		
		@ 92½ Brown Bros. Harriman & Co.....	9,250.00	198.33
131.	$20,000	City of Detroit, Michigan, 4¼% Fire Refunding Series A Bonds, payable to bearer, principal due December 15, 1948. Interest payable semi-annually June 15 and December 15, with interest coupons due June 15, 1935 and subsequent coupons attached.		
		@ 92 First of Boston Corp.....	18,400.00	396.67
132.	$10,000	City of Detroit, Michigan, 4¼% Various Public Improvement Refunding Series A Bonds, payable to bearer, principal due December 15, 1954. Interest payable semi-annually June 15 and December 15, with interest coupons due June 15, 1935 and subsequent coupons attached.		
		@ 92 First of Boston Corp.....	9,200.00	198.33
203				
133.	$10,000	City of Detroit, Michigan, 4¼% Markets Refunding Series A Bonds, payable to bearer, principal due February 1, 1963. Interest payable semi-annually February 1 and August 1, with interest coupon due August 1, 1935 and subsequent coupons attached.		
		@ 92 First of Boston Corp.....	9,200.00	145.21

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
134.	$10,000	City of Detroit, Michigan, 4¼% Public School Refunding Series A Bonds, payable to bearer, principal due February 1, 1963. Interest payable semi-annually February 1 and August 1, with interest coupon due August 1, 1935 and subsequent coupons attached. @ 92 First of Boston Corp.	9,200.00	145.21
135.	$850	City of Detroit, Michigan, Refunding Series B Registered Bond in the name of Henry M. Wolf, principal due August 1, 1962. Interest at the rate of 3% per annum to February 1, 1935, and 3¼% thereafter. Interest payable semi-annually on February 1 and August 1, with no interest coupons attached. Interest paid to 2/1/35. @ 76 First of Boston Corp.	646.00	9.34
136.	$1,204.17	City of Detroit, Michigan, Refunding Series C Registered Bond in the name of Henry M. Wolf, principal due August 1, 1962. Interest at the rate of 3% per annum to August 1, 1935, and 3¼% thereafter. Interest payable annually on August 1, with no interest coupons attached. Interest due from 8/1/34. Note: Of this $1,204.17 Series C Registered Bond, the sum of $212.50 belongs to and is the property of Julia L. Wolf, as sole surviving trustee under Section Thirteenth of the Will of Nanple Loewenthal, Deceased. @ 76 First of Boston Corp.	753.67	25.03
204				
137.	$424.80	City of Detroit, Michigan, Refunding Series C Registered Bonds in the name of Henry M. Wolf, principal due August 1, 1962. Interest at the rate of 3% per annum to August 1, 1935, and 3¼% thereafter. Interest payable annually on August 1, with no interest coupons attached. Interest due from December 15, 1934. @ 76 First of Boston Corp.	322.85	5.96
138.	$2,000	Milwaukee County, Wisconsin 4½% Metropolitan Sewerage Bonds of 1923, payable to bearer, principal due June 1, 1936. Interest payable semi-annually June 1 and December 1, with interest coupon due December 1, 1935 and subsequent coupon attached. @ 103¼ First of Boston Corp.	2,065.00	0.79
139.	$8,000	Milwaukee County, Wisconsin 4½% Metropolitan Sewerage Bonds of 1923, payable to bearer, principal due June 1, 1938. Interest payable semi-annually June 1 and December 1, with interest coupon due December 1, 1935 and subsequent coupons attached. @ 105½ First of Boston Corp.	8,440.00	3.17

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
140.	$20,000	City of Minneapolis, Minnesota 4% Permanent Improvement Revolving Fund Bonds of 1909, payable to bearer, principal due July 1, 1939. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached.		
		@ 106¾ First of Boston Corp.	21,375.00	340.00
141.	$5,000	City of Omaha, Nebraska 4¼% Special Improvement Series No. 2 Bonds, payable to bearer, principal due March 1, 1936. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupon attached.		
		@ 102⅛ Brown Bros. Harriman & Co.	5,106.25	54.90
205				
142.	$15,000	City of Omaha, Nebraska, 4% Bonds to Finance Street Improvements, Series of 1925, payable to bearer, principal due May 1, 1945. Interest payable semi-annually May 1 and November 1, with interest coupon due November 1, 1935 and subsequent coupons attached.		
		@ 108½ Brown Bros. Harriman & Co.	16,275.00	55.00
143.	$10,000	County of Ramsey, Minnesota 4½% County Road and Bridge Series E Bonds, payable to bearer, principal due March 1, 1940. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached.		
		@ 109⅝ Brown Bros. Harriman & Co.	10,975.00	116.25
144.	$10,000	County of Ramsey, Minnesota 4½% County Road and Bridge Series E Bonds, payable to bearer, principal due March 1, 1942. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached.		
		@ 112½ Brown Bros. Harriman & Co.	11,250.00	116.25
145.	$10,000	County of Ramsey, Minnesota, 4½% County Road and Bridge Series E Bonds, payable to bearer, principal due March 1, 1943. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached.		
		@ 112⅝ Brown Bros. Harriman & Co.	11,262.50	116.25
146.	$20,000	City of Saint Louis, Missouri, Public Buildings and Improvements 4% Bonds, payable to bearer, principal due December 1, 1943. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached.		
		@ 108⅜ The Northern Trust Co.	21,675.00	406.67

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
206				
147.	$46,000	City of Springfield, Illinois, 4½% Water Supply Lake Bonds, payable to bearer, principal due July 1, 1937. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached. @ 105⅛ First of Boston Corp.	48,702.50	879.75
148.	$ 4,000	City of Springfield, Illinois 4½% Water Supply Lake Bonds, payable to bearer, principal due July, 1938. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached. @ 107½ First of Boston Corp.	4,300.00	76.50
149.	$10,000	School District No. 145 High School Building 4¼% Bonds, Stephenson County, Illinois, payable to bearer, principal due December 1, 1937. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached. @ 104½ Brown Bros. Harriman & Co.	10,450.00	216.04
		CORPORATE AND MISCELLANEOUS BONDS.		
150.	$10,000	The Chicago Junction Railroad Company First Mortgage 4% Forty Year Gold Bonds, payable to bearer, principal due March 1, 1945. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached. @ 99 Fitch	9,900.00	103.33
151.	$ 4,000	The Cudahy Packing Company First Mortgage 5% Gold Bonds, payable to bearer, principal due December 1, 1946. Interest payable semi-annually June 1 and December 1, with interest coupon due December 1, 1935 and subsequent coupons attached. @ 105 N. Y. Curb	4,200.00	1.67
207				
152.	$18,000	The Peoples Gas Light and Coke Company of Chicago, Illinois, 5% Refunding Mortgage Gold Bonds, payable to bearer, principal due September 1, 1947. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached. @ 104¾ N. Y. S. E.	18,855.00	232.50

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
153.	$ 6,000	The Peoples Gas Light and Coke Company of Chicago, Illinois, 6% First Refunding Mortgage Series C Gold Bonds, payable to bearer, principal due June 1, 1957. Interest payable semi-annually June 1 and December 1, with interest coupon due June 1, 1935 and subsequent coupons attached.		
		@ 99¾ Fitch	5,985.00	103.00
154.	$32,000	Illinois Bell Telephone Company 5% First and Refunding Mortgage Series A Gold Bonds, payable to bearer, principal due June 1, 1956. Interest payable semi-annually June 1 and December 1, with interest coupon due December 1, 1935 and subsequent coupon attached.		
		@ 108¾ N. Y. S. E.	34,680.00	13.33
155.	$10,000	American Telephone and Telegraph Company Thirty-Five Year Sinking Fund 5% Gold Debentures, payable to bearer, principal due January 1, 1960. Interest payable semi-annually January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached.		
		@ 112-7/16 N. Y. S. E.	11,243.75	212.50
156.	$ 5,000	Chicago Union Station Company First Mortgage Series A 4½% Gold Bonds, payable to bearer, principal due July 1, 1963. Interest payable semi-annually, January 1 and July 1, with interest coupon due July 1, 1935 and subsequent coupons attached.		
		@ 104¾ N. Y. S. E.	5,237.50	95.62
208				
157.	$ 2,000	The Pennsylvania Railroad Company 4½% General Mortgage Series A Gold Bonds, payable to bearer, principal due June 1, 1965. Interest payable semi-annually June 1 and December 1, with interest coupon due December 1, 1935 and subsequent coupons attached.		
		@ 107¼ N. Y. S. E.	2,145.00	0.75
158.	$25,000	Inland Steel Company 4½% First Mortgage Sinking Fund Series A Gold Bonds, payable to bearer, principal due April 1, 1978. Interest payable semi-annually April 1 and October 1, with interest coupon due October 1, 1935 and subsequent coupons attached.		
		@ 105-5/16 N. Y. S. E.	26,328.12	196.87
159.	$ 4,000	Commonwealth Edison Company First Mortgage 5¼% Series G Gold Bonds, payable to bearer, principal due June 1, 1962. Interest payable semi-annually June 1 and December 1, with interest coupon due December 1, 1935 and subsequent coupons attached.		
		@ 105-5/16 N. Y. S. E.	4,212.50	1.83

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
160.	$56,000	Commonwealth Edison Company First Mortgage 4% Series F Gold Bonds, payable to bearer, principal due March 1, 1981. Interest payable semi-annually March 1 and September 1, with interest coupon due September 1, 1935 and subsequent coupons attached. @ 103-7/16 N. Y. Curb	57,925.00	573.67
161.	$ 5,000	Balance unpaid $4,250. Certificate of Deposit Number 10197 issued to and in the name Henry M. Wolf, for $5,000 par value of The Chicago City Railway Company 5% First Mortgage Gold Bonds, payable to bearer, principal due February 1, 1927. Interest payable semi-annually February 1 and August 1, with no interest coupons attached. @ 74⅛ Journal of Commerce	3,150.31	72.60
209				
162.	$ 2,000	Certificate of Deposit Number 247 issued to and in the name of Henry M. Wolf, for $2,000 par value of The Standard Club of Chicago, Illinois, Second Mortgage 5% Leasehold Gold Bonds, payable to bearer, principal due September 1, 1935. Interest payable semi-annually March 1 and September 1, with interest coupon due March 1, 1932 and subsequent coupons attached. No value—The Northern Trust Co.	—	—
163.	$ 9,000	Chicago and North Western Railway Company 4½% Twenty Year Convertible Series A Gold Bonds, payable to bearer, principal due November 1, 1949. Interest payable semi-annually May 1 and November 1, with interest coupon due May 1, 1935 and subsequent coupons attached. @ 14½ N. Y. S. E.	1,305.00	
164.	$11,000	German External Loan 1924 7% Gold Bonds, payable to bearer, principal due October 15, 1949. Interest payable semi-annually April 15 and October 15, with interest coupon due October 15, 1934 and subsequent coupons attached. @ 35 N. Y. S. E.	3,850.00	
165.	$ 4,000	Columbia Straw Paper Company 6% First Mortgage Gold Bonds, payable to bearer, principal due on or before December 1, 1901. Interest payable semi-annually June 1 and December 1, with interest coupon due December 1, 1894 and subsequent coupons attached. No value—The Northern Trust Co.	—	—

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
		STOCKS.		
166.	1427 Shares Common	American Smelting and Refining Company. Incorporated under the laws of the State of New Jersey, without par value, issued to and in the name of Henry M. Wolf. @ 42-9/16 N. Y. S. E.	60,736.69	
210				
167.	407 Shares	Anaconda Copper Mining Company. Incorporated under the laws of the State of Montana, of the par value of $50 each, issued to and in the name of Henry M. Wolf. @ 15-9/16 N. Y. S. E.	6,333.94	
168.	350 Shares Prior Preferred	Armour and Company. Incorporated under the laws of the State of Illinois, without par value, being $6. cumulative convertible stock, issued to and in the name of Henry M. Wolf. @ 62¼ N. Y. S. E.	21,787.50	525.00
169.	700 Shares Common	Armour and Company. Incorporated under the laws of the State of Illinois, of the par value of $5. per share, issued to and in the name of Henry M. Wolf. @ 3-3/16 N. Y. S. E.	2,231.25	
170.	200 Shares Convertible Preference	The Chicago Corporation. Incorporated under the laws of the State of Delaware, without par value, issued to and in the name of Henry M. Wolf. @ 34½ Chicago S. E.	6,900.00	
171.	130 Shares Common	The Chicago Corporation. Incorporated under the laws of the State of Delaware, of the par value of $1. each, issued to and in the name of Henry M. Wolf. @ 2 Chicago S. E.	260.00	
172.	1 Share	Chicago Law Institute. Incorporated under the laws of the State of Illinois, of the par value of $100., issued to and in the name of Alexander F. Reichmann and by him endorsed in blank. Attached to the Certificate is the following notation: "Law Institute Certificate No. 1484 is firm property transferred from M. L. Willard to Alexander F. Reichmann March 25, 1905. A. F. Reichmann". Note: One-half of this share of stock belonged to Henry M. Wolf at the time of his death; one-fourth thereof belonged to Noble Brandon Judah, and one-fourth thereof belonged to the Estate of Helen J. Schuneman, deceased. @ 75 The Northern Trust Co.	37.50	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
211				
173.	227 Shares Common	Chicago and Northwestern Railway Company. Incorporated under the laws of the State of Illinois, of the par value of $100. each, issued to and in the name of Henry M. Wolf. @ 3-3/16 N. Y. S. E.	723.56	
174.	99 Shares	Chicago Title and Trust Company. Incorporated under the laws of the State of Illinois, of the par value of $100. each, issued to and in the name of Henry M. Wolf. @ 96¼ Journal of Commerce	9,528.75	
175.	35 Shares Preferred	Chisholm, Boyd & White Company. Incorporated under the laws of the State of Illinois, of the par value of $100. each, issued to and in the name of Henry M. Wolf. @ 100 The Northern Trust Co.	3,500.00	
176.	25 Shares Common	Chisholm, Boyd & White Company. Incorporated under the laws of the State of Illinois, of the par value of $100. each, issued to and in the name of Henry M. Wolf. @ 100 The Northern Trust Co.	2,500.00	
177.	600 Shares Preferred	Columbia Straw Paper Company. Incorporated under the laws of the State of New Jersey, of the par value of $100. each, issued to and in the name of Henry M. Wolf, Trustee. No value—The Northern Trust Co.		
178.	10 Shares Preferred	Columbia Straw Paper Company. Incorporated under the laws of the State of New Jersey, of the par value of $100. each, issued to and in the name of Henry M. Wolf. No value—The Northern Trust Co.		
212				
179.	2220 Shares Common	Columbia Straw Paper Company. Incorporated under the laws of the State of New Jersey, of the par value of $100. per share, issued to and in the name of Henry M. Wolf, Trustee. No value—The Northern Trust Co.	—	—
180.	102 Shares Common	Columbia Straw Paper Company. Incorporated under the laws of the State of New Jersey, of the par value of $100. per share, issued to and in the name of Henry M. Wolf. No value—The Northern Trust Co.	—	—
181.	25 Shares	Continental Oil Company. Incorporated under the laws of the State of Delaware, without par value, issued to and in the name of Henry M. Wolf. @ 9¼ N. Y. S. E.	231.25	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
182.	20 Shares	Fidelity and Guaranty Fire Corporation. Incorporated under the laws of the State of Maryland, of the par value of $10. each, issued to and in the name of Henry M. Wolf. @ 31½ C. & F. Chronicle	630.00	
183.	200 Shares Common	The First National Bank of Chicago, Illinois, a National Banking Association, of the par value of $100. each, issued to and in the name of Henry M. Wolf. @ 100 Journal of Commerce	20,000.00	
184.	75 Shares	Foreman-State National Bank, a National Banking Association, of the par value of $100. each, issued to and in the name of Henry M. Wolf. No value—The Northern Trust Co.	—	—
185.	100 Shares	The Globe Rendering Company. Incorporated under the laws of the State of Maine, of the par value of $10. each, issued to and in the name of Henry M. Wolf. @ 2 The Northern Trust Co.	200.00	
213				
186.	22 Shares Preferred Series A	Illinois Central Railroad Company. Incorporated under the laws of the State of Illinois, of the par value of $100 each, issued to and in the name of Henry M. Wolf. @ 18 N. Y. S. E.	396.00	
187.	398 Shares Common	Illinois Central Railroad Company. Incorporated under the laws of the State of Illinois, of the par value of $100 each, issued to and in the name of Henry M. Wolf. @ 11½ N. Y. S. E.	4,577.00	
188.	16 Shares Common	International Harvester Company. Incorporated under the laws of the State of New Jersey, without nominal or par value, issued to and in the name of Henry M. Wolf. @ 39-13/16 N. Y. S. E.	637.00	2.40
189.	189 Shares Preferred	Kellogg Switchboard and Supply Company. Incorporated under the laws of the State of Illinois, of the par value of $100 each, issued to and in the name of Henry M. Wolf. @ 43 Chicago S. E.	8,127.00	
190.	179 Shares Common	Kellogg Switchboard and Supply Company. Incorporated under the laws of the State of Illinois, of the par value of $10 each, issued to and in the name of Henry M. Wolf. @6 Chicago S. E.	1,074.00	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
191.	20 Shares	Kennecott Copper Corporation. Incorporated under the laws of the State of New York without par value, issued to and in the name of Henry M. Wolf. @ 18-11/16 N. Y. S. E.	373.75	3.00
192.	20 Shares	The Mid-City National Bank of Chicago, a National Banking Association, of the par value of $100 each, issued to and in the name of Henry M. Wolf. @ 110 The Northern Trust Co.	2,200.00	
214				
193.	40 Shares	Mid-City Trust and Savings Bank. Incorporated under the laws of the State of Illinois, of the par value of $100 each, issued to and in the name of Henry M. Wolf. No value—The Northern Trust Co.	—	—
194.	800 Shares Common	Montgomery Ward & Co. Incorporated. Incorporated under the laws of the State of Illinois, without par value, issued to and in the name of Henry M. Wolf. @ 25-13/16 N. Y. S. E.	20,650.00	
195.	500 Shares Common	The Nash Motors Company. Incorporated under the laws of the State of Maryland, without par value, issued to and in the name of Henry M. Wolf. @ 12⅞ N. Y. S. E.	6,437.50	
196.	679-2/10 Shares Common A	The National Cash Register Company. Incorporated under the laws of the State of Maryland, without par value, issued to and in the name of Henry M. Wolf. @ 14⅜ N. Y. S. E.	9,763.50	
197.	50 Shares	The Northern Trust Company. Incorporated under the laws of the State of Illinois, of the par value of $100 each, issued to and in the name of Henry M. Wolf. @ 447½ Journal of Commerce	22,375.00	
198.	25 Shares Special	Pacific Tin Corporation. Incorporated under the laws of the State of Delaware, without nominal or par value, issued to and in the name of Henry M. Wolf. @ 30 N. Y. Curb	750.00	
199.	50 Shares Preferred	The Quaker Oats Company. Incorporated under the laws of the State of New Jersey, of the par value of $100 each, issued to and in the name of Henry M. Wolf. @ 145½ Chicago S. E.	7,275.00	

Item No.		Description	Fair Market Value at Date of Death	Accrued Interest or Dividends
215				
200.	648 Shares	Union Carbide and Carbon Corporation. Incorporated under the laws of the State of New York, without nominal or par value, issued to and in the name of Henry M. Wolf. @ 58¼ N. Y. S. E.	37,746.00	259.20
201.	755 Shares	United States Fidelity and Guaranty Company. Incorporated under the laws of the State of Maryland, of the par value of $2 each, issued to and in the name of Henry M. Wolf. @ 10¼ Journal of Commerce	7,738.75	
202.	400 Shares Preferred	United States Steel Corporation. Incorporated under the laws of the State of New Jersey, of the par value of $100 each, issued to and in the name of Henry M. Wolf. @ 86⅛ N. Y. S. E.	34,750.00	
203.	580 Shares Common	United States Steel Corporation. Incorporated under the laws of the State of New Jersey, of the par value of $100 each, issued to and in the name of Henry M. Wolf. @ 32⅜ N. Y. S. E.	18,777.50	
204.	25 Shares	The University Auxiliary Association. Incorporated under the laws of the State of Illinois, of the par value of $100 each, issued to and in the name of Henry M. Wolf. @ 50 The Northern Trust Co.	1,250.00	
205. 216	19 and 86114/100000 Shares	Unopco Corporation. Incorporated under the laws of the State of Delaware, without par value, issued to and in the name of Alexander F. Reichmann and by him endorsed in blank, with a notation attached to the certificate reading as follows: "January 14, 1931 Mr. Reichmann requests that this Certificate should remain untransferred for the present." Original executed Declaration of Trust by Alexander F. Reichmann dated January 6, 1931 respecting the above certificate and its ownership by Henry M. Wolf. @ 1600 Illinois Inheritance Tax Value	30,177.82	
206.	1500 Shares	F. W. Woolworth Co. Incorporated under the laws of the State of New York, of the par value of $10. each, issued to and in the name of Henry Wolf. @ 58-13/16 N. Y. S. E.	88,218.75	900.00
207.	10 Shares	The World's Columbian Exposition. Incorporated under the laws of the State of Illinois, of the par value of $10 each, issued to and in the name of Henry M. Wolf. No Value—The Northern Trust Co.		
			$3,677,423.34	$29,209.88
		Total Schedule B		$3,706,633.22

217 SCHEDULE C-1.

Mortgages, Notes, and Cash.

Instructions.

The classes of property under this schedule should be listed separately in the order given.

Mortgages.—State (1) face value and unpaid balance, (2) date of mortgage, (3) date of maturity, (4) name of maker, (5) property mortgaged, (6) interest dates and rate of interest, and (7) amount of unpaid interest. For example: Bond and mortgage for $5,000, unpaid balance $4,000; dated January 1, 1931, John Doe to Richard Roe; premises 22 Clinton St., Newark, N. J., due January 1, 1936; interest payable at 6 percent per annum January 1 and July 1; interest paid to July 1, 1934, unpaid interest $30. Reference is made to article 13 (5) of Regulations No. 80.

Notes, promissory.—Give similar data.

Contract by the decedent to sell land.—Give name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate, and date prior to decedent's death to which interest had been paid.

Cash in possession.—List separately from bank deposits.

Cash in bank.—Name bank and address, amount in each bank, serial number and nature of account, stating whether checking, savings, time deposit, etc. Include accrued interest in income column, or indicate if included in total on deposit. If statements are obtained from banks they should be retained for inspection by an internal revenue agent. Reference is made to article 13 (6) of Regulations No. 80.

Estate of nonresident alien.—In the case of an estate of a nonresident alien of the United States (or a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) mortgages or notes owned by the decedent at the time of death must be included hereunder if the mortgagors or makers were residents of the United States or, regardless of the residence of the mortgagors or makers, if the mortgage certificates or notes were physically in the United States at the time of death. If such decedent was engaged in business in the United States at the time of his death, accounts in banks situated in the United States must be included hereunder. Report fully all facts concerning any account not included. Reference is made to article 50 of Regulations No. 80.

Did the decedent, at the time of his death, own any mortgages, notes, or cash? (Answer "Yes" or "No.") Yes.

Item No	Description	Fair market value at date of death	Interest and other income accrued to date of death
		$	$
	See Attached Schedule		
	Totals	$	$
	Grand Total (also enter under the Recapitulation, Schedule L)	$	$468,946.69

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf. Date of death June 4, 1935.

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SCHEDULE C-1.

Mortgages, Notes and Cash.

Item No.	Description	Fair Market Value—Date of Death	Accrued Interest
	Cash		
208.	Checking account with The Northern Trust Company	$235,893.60	$
209.	Checking account with The Northern Trust Company	139.29	
210.	Checking account with Continental Illinois National Bank and Trust Company	551.72	
211.	Checking account with Mid-City National Bank of Chicago	1,690.87	
212.	Savings account #287530 with The Northern Trust Company	9,364.03	80.11
213.	Cash on hand	84.30	
214.	Cash collected by office of Decedent	11,685.44	
215.	Money in Safety deposit box: Three (3) Ten Dollar ($10) Gold Pieces	30.00	
	Notes Secured by Collateral		
216.	$ 6,000 Joint and several Collateral Note of John O'Connor and Julius A. Goldberg, dated January 29, 1914, due 120 days after date, payable to the order of Henry M. Wolf, Corn Exchange Bank Building, Chicago, with interest at the rate of 6% per annum.		
219	(Note on decedent's ledger: From June 1, 1934 this note bears interest at the rate of 5% per annum.) Interest paid to November 29, 1935. @ 100 (Paid since June 4, 1935)	$ 6,000.00	$ —

Item No.		Description	Fair Market Value--Date of Death	Accrued Interest
217.	$30,000	Joint and several Collateral Note of John O'Connor and Julius A. Goldberg, dated November 30, 1917, due May 8, 1918, payable to the order of Henry M. Wolf, at his office, No. 1501, 134 South LaSalle Street, Chicago, with interest at the rate of 7% per annum after maturity.		
		(Note on decedent's ledger: May 28, 1934—From June 1, 1934 this note bears interest at the rate of 6% per annum.)		
		Interest paid to November 4, 1935.		
		@ 100 (Paid in full since 6-4-35)	30,000.00	—
218.	$21,000	Balance due on $25,000 Demand Note of Julia L. Wolf, dated December 17, 1930, payable to the order of Henry M. Wolf, with interest at the rate of 4% per annum.		
		Endorsement:		
		January 15, 1934—Paid on account of principal $4,000.		
		@ 100	21,000.00	4,239.77
219.	$10,000	Judgment Note of Oscar D. Stern, dated November 10, 1934, due one year after date, payable to the order of Henry M. Wolf at his office at 134 South LaSalle Street, Chicago, without interest up to maturity.		
220		@ 100	10,000.00	—
220.	$ 50.00	Note of Arthur A. Bliss, dated Chicago, April 11, 1891, due ninety days after date, payable to the order of Henry M. Wolf at 76 Adams Express Building, Chicago, without interest up to maturity.		
		Endorsement:		
		"1895 May By cash fr. John A. Porter a/c int. $2.00"		
		Collateral to above note as follows:		
		10 Shares Santa Juliana Mining Co. Incorporated under the laws of the State of New York, issued to and in the name of Arthur A. Bliss and endorsed by him in blank.		
		51 Shares La Cruz Mining Co. Incorporated under the laws of the State of New York, issued to and in the name of Arthur A. Bliss and endorsed by him in blank.		
		No Value	$ —	$ —
		Unsecured Notes		
221.	$15,000	Balance due on $50,000 Demand Note of O'Connor & Goldberg (an Illinois Corporation), dated April 19, 1926, payable to the order of Henry M. Wolf, at 205 South State Street, Chicago, with interest at the rate of 4½% per annum.		
		(Note on decedent's ledger: Interest on this note is payable at the rate charged at the bank for money loaned on demand.)		
		Interest paid to May 19, 1935.		
		@ 100 (Paid in full since 6-4-35)	15,000.00	28.25

Item No.		Description	Fair Market Value—Date of Death	Accrued Interest
221				
222.	$14,000	Demand Note of O'Connor & Goldberg (an Illinois corporation), dated March 24, 1934, payable to the order of Henry M. Wolf, at 205 South State Street, Chicago, with interest at the rate of ....% per annum. (Note on decedent's ledger: Since October 1, 1934, O'Connor & Goldberg have paid and Mr. Wolf accepted interest at the rate of 4½% per annum.) Interest paid to December 31, 1934. @ 100 (Paid in full since 6-4-35).....	14,000.00	267.75
223.	$ 2,500	Note of Carl S. Stern, dated September 10, 1934, due March 10, 1935, payable to the order of Henry M. Wolf at Chase National Bank, 115 Broadway, New York City, New York, with interest at the rate of 6% per annum. @ 100	2,500.00	109.58
224.	$ 2,450	Demand Note of Carl S. Stern, dated New York February 13, 1935, payable to the order of Henry M. Wolf at Chase National Bank, 115 Broadway, New York City, New York, with interest at the rate of 6% per annum. @ 100	2,450.00	44.92
225.	$ 1,375	Demand Note of William M. Brinkman, dated January 22, 1935, payable to the order of Henry M. Wolf at Room 1501, 134 South LaSalle Street, Chicago. @ 10	137.50	—
226.	$ 250	Demand Note of William M. Brinkman, dated February 13, 1935, payable to he order of Henry M. Wolf at 134 South LaSalle Street, Chicago, with interest at the rate of 6% per annum. @ 10	25.00	—
222				
227.	$750.00	Note of Wolf, Shaughnessy & Davis, dated Octoebr 15, 1934, due November 15, 1934, payable to the order of Henry M. Wolf at his office at 134 South LaSalle Street, Chicago, with interest at the rate of 7% per annum after maturity, endorsed by Walter B. Wolf, T. J. Shaughnessy and Walter B. Davis. @ 100	750.00	28.87
228.	$ 1,500	Demand Note of Wolf, Shaughnessy & Davis, dated February 15, 1935, payable to the order of Henry M. Wolf at his office at 134 South LaSalle Street, Chicago, with interest at the rate of 5% per annum; endorsed by Walter B. Wolf and Walker B. Davis. @ 100	1,500.00	22.50

Item No.		Description	Fair Market Value—Date of Death	Accrued Interest
229.	$ 3,000	Demand Note of Walter B. Wolf, dated January 16, 1932, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 6% per annum from date until paid.		
		@ 100	3,000.00	608.50
230.	$ 3,750	Demand Note of Walter B. Wolf, dated February 2, 1932, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 6% per annum from date until paid.		
		@ 100	3,750.00	750.63
231.	$ 2,000	Demand Note of Walter B. Wolf, dated February 10, 1932, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 6% per annum from date until paid.		
		@ 100	2,000.00	397.67
232.	$ 2,500	Demand Note of Walter B. Wolf, dated May 9, 1932, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 6% per annum.		
		@ 100	2,500.00	460.00
233.	$ 1,250	Demand Note of Walter B. Wolf, dated June 1, 1932, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 6% per annum.		
		@ 100	1,250.00	225.41
234.	$ 3,000	Demand Note of Walter B. Wolf, dated June 7, 1932, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 6% per annum.		
		@ 100	3,000.00	538.00
235.	$ 3,000	Demand Note of Walter B. Wolf, dated July 22, 1932, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 6% per annum.		
		@ 100	3,000.00	515.50
236.	$900.00	Balance due on $2,500. Demand Note of Walter B. Wolf, dated November 15, 1932, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 6% per annum.		
		Endorsement:		
		January 5, 1935 check from Judah, Reichmann, Trumbull, Cox & Stern paid to Henry M. Wolf and applied as a credit on this note—$1,600. "G.E.S."		
		@ 100	900.00	343.04

Item No.		Description	Fair Market Value—Date of Death	Accrued Interest
224				
237.	$ 2,500	Demand Note of Walter B. Wolf, dated December 30, 1932, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 6% per annum.		
		@ 100	2,500.00	363.75
238.	$19,302.03	Demand Note of Walter B. Wolf, dated January 25, 1933; payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum.		
		@ 100	19,302.03	1,818.70
239.	$750.00	Demand Note of Walter B. Wolf, dated February 23, 1933, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 5% per annum.		
		@ 100	750.00	85.41
240.	$ 2,500	Demand Note of Walter B. Wolf, dated March 3, 1933, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum.		
		@ 100	2,500.00	225.00
241.	$ 1,250	Demand Note of Walter B. Wolf, dated April 5, 1933, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum.		
		@ 100	1,250.00	108.05
242.	$750.00	Demand Note of Walter B. Wolf, dated April 24, 1933, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum.		
		@ 100	750.00	63.25
225				
243.	$750.00	Demand Note of Walter B. Wolf, dated May 25, 1933, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum.		
		@ 100	750.00	60.67
244.	$750.00	Demand Note of Walter B. Wolf, dated July 25, 1933, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum.		
		@ 100	750.00	55.67
245.	$750.00	Demand Notes of Walter B. Wolf, dated August 25, 1933, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum.		
		@ 100	750.00	53.14
246.	$750.00	Demand Note of Walter B. Wolf, dated October 25, 1933, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum.		
		@ 100	750.00	48.15

Item No.		Description	Fair Market Value—Date of Death	Accrue Interes
247.	$750.00	Demand Note of Walter B. Wolf, dated November 25, 1933, payable to the order to Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum. @ 100	750.00	45.
248.	$ 1,000	Demand Note of Walter B. Wolf, dated January 24, 1934, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum. @ 100	1,000.00	54.
226				
249.	$750.00	Demand Note of Walter B. Wolf, dated January 25, 1934, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum. @ 100	750.00	40.
250.	$ 1,000	Demand Note of Walter B. Wolf, dated February 16, 1934, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum. @ 100	1,000.00	51.
251.	$ 1,000	Demand Note of Walter B. Wolf, dated June 6, 1934, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum. @ 100	1,000.00	39.
252.	$ 1,600	Demand Note of Walter B. Wolf, dated June 6, 1934, payable to the order of Henry M. Wolf at The Northern Trust Company, Chicago, with interest at the rate of 4% per annum. @ 100	1,600.00	63.
253.	$500.00	Demand Note of Newell C. Knight, dated Chicago, Illinois, January 9, 1914, payable to the order of Henry M. Wolf, with interest at the rate of 6% per annum. No Value	—	—
254.	$155.00	Balance due on $180.00. Note of Mrs. A. Weil, dated December 31, 1930, due January 1, 1931, payable to the order of A. Segal, for rent due him from Mrs. H. Stinson for three months rent. Endorsement: July 28-1931-$25 paid on account of principal. "Pay to the order of Henry M. Wolf-A. Segel." No Value	—	—
227				
255.	$ 25.00	Note of John Irving Pearce, Jr. Dated May 7, 1931, due on or before sixty days after date, payable to the order of Henry M. Wolf at his office without interest up to maturity. No Value	—	—

Item No.		Description	Fair Market Value—Date of Death	Accrued Interest
256.	1,000 Yen	Note of Mabel B. Happer, dated Tokyo, Japan, October 1, 1928, due one year after date, payable to the order of Henry M. Wolf without interest up to maturity. Value of 1000 yen $291.50. No Value	—	—
257.	$ 50.00	Note of A. Dreyfuss, dated Chicago, September 13, 1887, due sixty days after date, payable to the order of Henry M. Wolf at 74 Adams Express Building, without interest up to maturity. No Value	—	—
258.	$ 20.00	Note of Adolph Dreyfuss, dated Chicago, November 21, 1887, due one year after date, payable to the order of Henry M. Wolf at 74 Adams Express Building, Chicago, without interest up to maturity. No Value	—	—
259.	$ 31.20	Demand Judgment Note of Adolph Dreyfuss, dated Chicago, October 26, 1889, payable to the order of Henry M. Wolf at his office, with interest at the rate of 6% per annum. No Value	—	—
260.	$ 10.00	Note of Carl Y. Link, dated Chicago, December 18, 1895, due January 5, 1896, payable to the order of Henry M. Wolf, without interest up to maturity. No Value	—	—
228				
261.	$ 10.00	Note of Isidore Hirsch, dated Chicago, August 27, 1896, due on or before December 1, 1896, payable to the order of Henry M. Wolf at his office, Adams Express Building, Chicago, with interest at the rate of 6% per annum. No Value	—	—
262.	$157.00	Demand Note of John B. Skinner, dated Chicago, Illinois, December 26, 1905, payable to the order of Henry M. Wolf with interest at the rate of 6% per annum after date. No Value	—	—
263.	$100.00	Note of Isidore Rothschild, dated New Orleans, La., April 2, 1914, due one day after date payable to the order of Henry M. Wolf without interest up to maturity. No Value	—	—
264.	$150.00	Demand Note of Mme. M. Yale, Inc., Mme. M. Yale, President, dated New York City, January 8, 1921, payable to the order of Henry M. Wolf at 2160 Broadway, New York City, New York. No Value	—	—
265.	$100.00	Demand Note of Mme. M. Yale, Inc., Mme. M. Yale, President, dated March 21, 1931, payable to the order of Henry M. Wolf at their office at 15 West 17th Street, New York City, New York, with interest at the rate of 6% per annum. No Value	—	—

Item No.		Description	Fair Market Value—Date of Death	Accrued Interest
266.	$300.00	Balance due on $354. Note of Granville W. Browning, dated April 23, 1929, due June 15, 1929, payable to the order of Henry M. Wolf at his office at 134 South LaSalle Street, Chicago, with interest at the rate of 6% per annum.		
229				
		Endorsement:		
		June 24, 1929 $54. paid on account of principal and $3.54 paid on account of interest from April 23, 1929 to June 23, 1929.		
		No Value	—	—
		Mortgage Notes		
267.	$ 7,000	Balance due on Principal Promissory Note of Frederick W. Gookin and Marie Sieboth Gookin; dated October 31, 1925 and due five (5) years after date, for $10,000., payable to the order of themselves under the style of "Ourselves" and by them duly endorsed and delivered with interest at the rate of 5½% per annum, payable semi-annually on April 30 and October 31 in each year, and at the rate of 7% after maturity.		
		Endorsement:		
		January 30, 1934—Paid on account of the principal of the within note—$3,000.		
230		This indebtedness is secured by trust deed from Frederick W. Gookin and Marie Sieboth Gookin to Walter B. Wolf, Trustee, dated October 31, 1925 and recorded in the Recorder's office of Cook County, Illinois on November 4, 1925, in Book 21904 of Records at Page 487, as Document Number 9086497, conveying Lots Sixteen (16) and Seventeen (17) in Block One in Dale's Second Subdivision of the Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section Twenty (20) Township Forty-two (42) North, Range Thirteen (13) East of the Third Principal Meridian, in Cook County, Illinois. The lien of this trust deed has been extended upon Lot 15 except the South 25 feet by the terms of the trust deed described below, recorded as Document Number 11106607.		
		The time of payment of this indebtedness was extended to October 31, 1933 by renewal agreement dated October 31, 1930 between Frederick W. Gookin and Marie Sieboth Gookin and Henry M. Wolf, with interest at the rate of 5½% per annum and 7% per annum after maturity.		
		Interest paid to April 30, 1935.		
		@ 95	6,650.00	35.29

Item No.		Description	Fair Market Value—Date of Death	Accrued Interest
268	$ 2,000	Principal promissory note of Frederick W. Gookin, dated June 10, 1932 and due October 31, 1933, for $2,000., payable to the order of himself under the style of "Myself" and by him duly endorsed and delivered, with interest at the rate of 5% per annum, payable on April 30, and October 31 in each year, and at the rate of 7% after maturity.		
231		This indebtedness is secured by a trust deed from Frederick W. Gookin to Walter B. Wolf, Trustee, dated June 10, 1932 and recorded in the Recorder's office of Cook County, Illinois on June 22, 1932, in Book 30221 of Records, at page 221, as Document Number 11106607, conveying Lot Fifteen (15), (except the South twenty-five (25) feet thereof), and Lots Sixteen (16) and Seventeen (17), all in Block One (1), in Dale's Second Subdivision of the Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section Twenty (20), Township Forty-two (42) North, Range Thirteen (13) East of the Third Principal Meridian, in Cook County, Illinois.		
		The real estate underlying items 267 and 268 constitute the home of Mr. Frederick W. Gookin located at Number 321 Linden Street, Winnetka, Illinois. Interest paid to April 30, 1935.		
		@ 95	1,900.00	9.16
269	$ 2,000	Principal Promissory Note Number D, of Swan Larson and Almida L. Larson, dated August 1, 1927 and due August 1, 1933, for $2,000., payable to bearer, with interest at the rate of 5¾% per annum, payable semi-annually on February 1 and August 1, in each year, and with interest after maturity until paid at the highest rate for which it is now in such case lawful to contract.		
		Endorsements:		
		Pay to the order of The Northern Trust Company without recourse.		
		Henry M. Wolf.		
232				
		Paid semi-annual interest on the within note due February 1, 1934—$57.50.		
		Paid semi-annual interest on the within note due August 1, 1934—$57.50.		
		Paid semi-annual interest on the within note due February 1, 1935—$57.50.		
		@ 50	1,000.00	38.97

Item No.		Description	Fair Market Value—Date of Death	Accrued Interest
270	$32,000	Principal promissory note Number E, of Swan Larson and Almida L. Larson, dated August 1, 1927 and due August 1, 1934, for $32,000, payable to Bearer, with interest at the rate of 5¼% per annum, payable semi-annually on February 1 and August 1, in each year, and with interest after maturity until paid at the highest rate for which it is now in such case lawful to contract. Endorsement: February 1, 1935—Paid semi-annual interest due today on the within note $1020. Items 269 and 270 are secured by trust deed from Swan Larson and Almida L. Larson to Chicago Title and Trust Company, Trustee, dated August 1, 1927 and recorded in the Recorder's office of Cook County, Illinois on August 10, 1927 in Book 24714 of Records, at page 338, as Document Number 9743713, conveying Lots Twenty-eight (28) and Twenty-nine (29) in Margaret Kransz Trustees' Addition to North Edgewater, a subdivision in the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Five (5), Township Forty (40) North, Range Fourteen (14) East of the Third Principal Meridian, in Cook County, Illinois, according to the plat thereof recorded September 11, 1922, in Book 171 of Plats at page 26 as Document Number 7639271. This property is improved with a three story and basement brick building containing six 6-room apartments and is located at Numbers 1526 and 1528 Thorndale Avenue, Chicago, Illinois.		
288		@ 50	16,000.00	623.55
271	$10,000	Principal promissory note Number 1 of Frank J. Bartuska and Emaline A. Bartuska, dated April 17, 1928 and due five years after date, for $10,000., payable to the order of themselves under the style of "Ourselves" and by them duly endorsed and delivered, with interest at the rate of 7% per annum from April 17, 1928 payable semi-annually on April 17 and October 17 in each year, and with with interest at the rate of 7% per annum after maturity. This indebtedness is secured by trust deed from Frank J. Bartuska and Emaline A. Bartuska to Arthur M. Cox, Trustee, dated April 17, 1928 and recorded in the Recorder's office of Cook County, Illinois on April 19, 1928 in Book 25716 of Records, at page 487, as Document Number 9904189, conveying Lots Twenty-six (26), Twenty-seven (27) and Twenty-eight (28) (except the North seven (7) feet of said lots taken for widening Dempster Street) in Terminal Subdivision in the Northeast Quarter (NE¼) of Section Twenty-one (21), Township Forty-one (41) North, Range Thirteen (13) East of the Third Principal Meridian, in the Village of Niles Center, according to		
284				

Item No.		Description	Fair Market Value—Date of Death	Accrued Interest
		the plat recorded on April 16, 1924 as Document Number 8368019, in Cook County, Illinois.		
		This is vacant property, 75 feet by 118 feet, located at the Southeast Corner of Dempster Street and Bronx, in Niles Center, Illinois.		
		Interest paid to April 17, 1934, and $160. paid on account of integest due October 17, 1934.		
		@ 25	2,500.00	—
272.	$40,000	Principal Promissory Note of Philip Edelberg and Emma Edelberg, dated November 5, 1926 and due December 1, 1931, for $40,000., payable to Bearer, with interest at the rate of 6% per annum from December 1, 1926, payable semi-annually on June 1 and December 1 in each year, and with interest after maturity until paid at the highest rate for which it is now in such case lawful to contract, with two interest coupons numbers 9 due June 1, 1931 and 10 due December 1, 1931, each for $1,200., attached.		
285		This indebtedness is secured by trust deed from Philip Edelberg and Emma Edelberg to Chicago Title and Trust Company, Trustee, dated November 5, 1926 and recorded in the Recorder's office of Cook County, Illinois on November 29, 1926 in Book 23884 of Records, at page 478, as Document Number 9479746, conveying Lot Seven (7) and the West Half (W½) of Lot Six (6) in Meiswinkel's Subdivision of the West seven hundred sixty-eight and thirty-seven one-hundredths (768.37) feet of that part of the North Quarter (N¼) of Block One (1) West of Green Bay Road in the Canal Trustees' Subdivision of the East Half (E½) of Section Twenty-nine (29), Township Forty (40) North, Range Fourteen (14) East of the Third Principal Meridian, in Cook County, Illinois, together with the three story and basement brick store and flat building now on said real estate, known as 906-907 Belmont Avenue, Chicago.		
		The time of payment of this indebtedness and of said coupons numbers 9 and 10 was extended to August 1, 1933, with interest at the rate of 7% per annum, by agreement dated December 31, 1931 by and between Leo Edelmann, as Trustee under the provisions of a trust agreement dated May 20, 1931 and known as Philip Edelberg Trust, and the deed in Trust recorded in the Recorder's office of Cook County, Illinois on May 21, 1931 as Document		
286		Number 10900762, party of the first part, Philip Edelberg and Emma Edelberg (husband and wife) parties of the second part, and Henry M. Wolf, party of the third part.		
		@ 25	10,000.00	—
			$456,403.78	$12,542.91
			12,542.91	
		Total Schedule C-1	$468,946.69	

237 SCHEDULE C-2.

Insurance.

Instructions.

Include in the gross estate all insurance on the life of the decedent as follows: (a) The full amount of insurance receivable by or for the benefit of the estate; (b) the amount that exceeds $40,000 of the aggregate insurance receivable by beneficiaries other than the estate where the decedent possessed any of the legal incidents of ownership. Legal incidents of ownership in the policy include, for example: The right of the insured or his estate to its economic benefits, the power to change the beneficiary; to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan or to obtain from the insurer a loan against the surrender value of the policy, etc. The decedent possesses a legal incident of ownership if the rights of the beneficiaries to receive the proceeds are conditioned upon the beneficiaries surviving the decedent.

Insurance payable to the estate should be listed first, and immediately following should be listed all insurance payable to beneficiaries other than the estate whether the executor believes that the decedent possessed any of the legal incidents of ownership or not. If the executor believes that the decedent did not possess any of the legal incidents of ownership the amount receivable should be disclosed under the second column headed "Description", and a photostatic copy of the policy should be filed with the return. Deduction may be taken at the bottom of the schedule equal to the amount of the proceeds of insurance receivable by beneficiaries other than the estate and returned in the third column, but not exceeding $40,000. In describing the policy, state name of company, number of policy, and name of beneficiary.

The "Life Insurance Statement", Form 712, for each policy listed hereunder should be obtained from the insurance company by the executor and filed with the return.

For further instructions see articles 25 to 28, inclusive, Regulations No. 80.

Estate of nonresident alien.—In the case of an estate of a nonresident alien of the United States (or an estate of a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) the proceeds of insurance on his life need not be included. Reference is made to article 50 of Regulations No. 80.

(1) Was any insurance on life of decedent receivable by his estate? (Answer "Yes" or "No.") Yes

(2) Was any insurance on life of decedent receivable by beneficiaries other than the estate? (Answer "Yes" or "No.") No

Item No.	Description	Value of proceeds at date of death
	The New England Mutual Life Insurance Company Installment Certificate Number 411 dated July 15, 1922, issued to and in the name of Henry M. Wolf, providing for the payment of twenty annual installments of $1,000. each. Value as of June 4, 1935, the date of Mr. Wolf's death	$6,464.27
	Total	$6,464.27
	Less amount of insurance receivable by beneficiaries, other than the estate, not in excess of $40,000	$ —
	Total Included (also enter under the Recapitulation, Schedule)	$6,464.27

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf. Date of death June 4, 1935.

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SCHEDULE D-1.

Jointly Owned Property.

Instructions.

All property of whatever kind or character, whether real estate, personal property, bank accounts, etc., in which the decedent held at the time of his death an interest either as a joint tenant or as a tenant by the entirety, with right of survivorship, must be disclosed under this schedule.

The full value of the property must be included in the fourth column, unless it can be shown that a part of the property originally belonged to the other tenant or tenants and was never received or acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth. Where it is shown that the property or any part thereof, or any part of the consideration with which the property was purchased, was acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth, there should be omitted only so much of the value of the property as is proportionate to the consideration furnished by such other tenant or tenants. For the purposes of the estate tax, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

Where the property was acquired by gift, bequest, devise, or inheritance by the decedent and spouse as tenants by the entirety, then

only one-half of the value of the property should be included. Where the property was acquired by the decedent and another person or persons by gift, bequest, devise, or inheritance as joint tenants, and their interests are not otherwise specified or fixed by law, then there should be included only such fractional part of the value of the property as is obtained by dividing the full value of the property by the number of joint tenants.

If the executor contends that less than the value of the entire property is includible in the gross estate for purposes of the tax, the burden is upon him to show his right to include such lesser value, and in such case he should make proof of the extent, origin, and nature of the decedent's interest and the interest of the decedent's cotenant or cotenants.

In the third column should be entered the fair market value of the whole property, even though only a fractional part thereof is returnable in column 4. In the fourth column should be entered the amount to be included in the gross estate pursuant to the instructions given above. In the fifth column should be entered the rents, interest, and other income accrued to the date of the decedent's death in the same proportion as the amount entered in column 4 bears to the amount entered in column 3. If the property consists of real estate, the assessed value thereof for the year of death should be shown in the second column, headed "Description of property."

Property in which the decedent held an interest as a tenant in common should not be listed here, but the value of his interest therein should be returned under Schedule A, if real estate, or if personal property, under such other appropriate schedule. The value of the decedent's interest in partnerships should not be included here, but under Schedule D-2, on the following page, designated as "Other Miscellaneous Property."

For further instructions, see articles 22 and 23, Regulations 80.

Did the decedent, at the time of his death, own any property as a joint tenant or as a tenant by the entirety, with right of survivorship? (Answer "Yes" or "No.") No

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
		$	$	$
	None			
	Totals		$	$
	Grand Total (also enter under the Recapitulation, Schedule L)		$	None

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf. Date of death June 4, 1935.

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SCHEDULE D-2.

Other Miscellaneous Property.

Instructions.

Under this schedule include all items of gross estate not returned under another schedule, including the following: Debts due the decedent; interests in business; claims, rights, royalties, pensions; leaseholds, judgments, shares in trust funds; household goods and personal effects, including wearing apparel; farm products and growing crops; livestock, farm machinery, automobiles, etc.

When an interest in a copartnership or unincorporated business is returned, submit in duplicate statement of assets and liabilities as of date of death and for the 5 years preceding death, and statement of the net earnings for the same 5 years. Good will must be accounted for. In general, the same information should be furnished and the same methods followed as in valuing close corporations.

In describing an annuity, the name and address of the grantor of the annuity should be given, or if payable out of a trust or other fund, such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated.

For further instructions, see articles 11, 12, 13, and 50 of Regulations No. 80.

(1) Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business? (Answer "Yes" or "No.") No

(2) Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? (Answer "Yes" or "No.") Yes

Item No.	Description	Fair market value at date of death	Interest and other income accrued to date of death
	See Attached Schedule	$	$
	Totals	$	$
	Grand Total (also enter under Recapitulation, Schedule L)		$51,161.79

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf. Date of death June 4, 1935.

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SCHEDULE D-2.

Other Miscellaneous Property.

Item No.	Description	Fair market value at date of death
274.	Household goods and personal effects, as per Bill of Appraisement	$ 6,213.40
275.	Twenty-three (23) ride ticket of Illinois Central Railroad Company between 57th Street and Randolph Street, No. A 325, purchased April 17, 1935. Good for refund of	2.81
276.	One sheet of fifty (50) United States Mother's Day 3¢ stamps	1.50
277.	Receipt of The Chicago Bar Association Number 124, dated March 3, 1932, in which the Bar Association acknowledges a loan, without interest, by Henry M. Wolf to it of $500., the time of payment of which was extended by decedent, by correspondence, to October 1, 1935	500.00
278.	Chicago Title and Trust Company Depositary's Certificate No. 13, issued to and in the name of Henry M. Wolf, for 1.986114 Per Cent of all amounts distributable by Chicago Title and Trust Company from the Guarantee Fund described in a certain Purchase Agreement dated January 2, 1931, between United Gasoline Corporation, Hiram J. Halle, Robert J. Dunham, Carbon P. Dubbs, John J. Mitchell, Alexander F. Reichmann and Frank L. Belknap. Paid	14,180.37
279.	Uncollected accounts due for professional services, the amounts of which have not yet been determined	29,987.30
280.	Certificate of Membership Number 1502, dated August 1, 1906, in South Shore Country Club, incorporated under the laws of the State of Illinois, issued to and in the name of Henry M. Wolf. No Value	
281.	Certificate of Membership Number 513, dated July 1, 1926, in The Standard Club, Incorporated under the laws of the State of Illinois, issued to and in the name of Henry M. Wolf. No Value	
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282.	An undivided 18.4275% of the following bonds: $5,000 Village of Barrington, Illinois Improvement Bonds, Special Assessment No. 8, payable to bearer, principal due December 15, 1936, interest payable annually December 15, with interest coupons due December 15, 1932 and subsequent attached. @ 30	276.41
283.	Note on decedent's ledger of $25.00 loan made on December 7, 1931 to M. B. Wilson of New York City. No Value	—
	Total Schedule D-2	$51,161.79

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SCHEDULE E.

Transfers.

Instructions.

The following transfers made by the decedent during his life, by trust or otherwise, other than bona fide sales for an adequate and full consideration in money or money's worth, are subject to the tax, must be returned under this schedule, and the value of the property entered in the fourth column:

(1) Transfers subsequent to the enactment of the Revenue Act of 1916 made in contemplation of death.

(2) Transfers resulting from an arrangement, whether made before or after the enactment of the Revenue Act of 1916, whereby title was not to pass from the decedent to the beneficiary unless the latter survived the former, or title, having passed, was to be divested and the property returned to the decedent if the beneficiary predeceased him.

(3) Transfers made after the enactment of the Revenue Act of 1916 whereby the use, possession, or income was retained by the decedent for his life, or for a period only ascertainable by reference to his death, or for a period of such duration as to evidence his intention to retain the enjoyment for his life, except where the decedent died prior to 5 p. m., eastern standard time, June 6, 1932, and the transfer was made prior to 10:30 p. m., eastern standard time, March 3, 1931.

(4) Transfers whereby the decedent retained for his life, or for a period only ascertainable by reference to his death, or for a period of such duration as to evidence an intention that it should continue for his life, the right, either alone or in conjunction with any other person or persons, to designate who shall possess or enjoy the property or any of the income, as follows:

(a) In case the right permitted the determination of the ultimate disposition of the property, the transfer is taxable, whether it was made before or after the enactment of the Revenue Act of 1916.

(b) In case the right was limited to the disposition of the possession, enjoyment, or income during decedent's life, or during a period only ascertainable by reference to his death, or during a period of such extent as to evidence an intention that it should continue for his life, the transfer is taxable, if it was made after the enactment of the Revenue Act of 1916, except where the decedent died prior to 5 p. m., eastern standard time, June 6, 1932, and the transfer was made prior to 10:30 p. m., eastern standard time, March 3, 1931.

(5) Transfers, whether made before or after the enactment of the Revenue Act of 1916, whereby the enjoyment of the transferred prop-

erty was subject at decedent's death to any change through the exercise, either by decedent alone or in conjunction with any person, of a power to alter, amend, or revoke.

(6) Transfers, made after the enactment of the Revenue Act of 1916, resulting from the relinquishment in contemplation of death of the decedent's power, exercisable either alone or in conjunction with any person, to alter, amend, or revoke.

Transfers included in the gross estate should be valued as of the date of death. If a portion only of the property is so transferred as to come within the terms of the statute, only a corresponding proportion of the value of the property should be included in the gross estate. If the transferee makes additions to the property, or betterments, the enhanced value of the property at date of decedent's death due to such additions or betterments, should not be included.

To constitute a bona fide sale for an adequate and full consideration in money or money's worth, it must have been made in good faith, and the price must have been an adequate and full equivalent, and reducible to a money value: If the price was less than an adequate and full equivalent, only the excess of the fair market value of the property, as of the date of the decedent's death, over the price received by the decedent should be included in the gross estate. For the purpose of the estate tax the relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

All transfers made by the decedent during his life of an amount of $5,000 or more except bona fide sales for an adequate and full consideration in money or money's worth, must be disclosed in the return, whether the executor regards such transfers as subject to the tax or not. If the executor believes that such a transfer is not subject to the tax a brief statement of the pertinent facts should be made.

In case a transfer, by trust or otherwise, was made by a written instrument, duplicate copies thereof should be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. If the decedent was a nonresident, only one copy, certified or verified, need be filed.

The name of the transferee, date and form of transfer, description of property, and fair market value at time of death, should be set forth in this schedule. Rents and other income accrued to the date of death should be shown in the last column.

For further instructions, see articles 15 to 21, inclusive, Regulations No. 80.

Nonresident alien.—If the decedent was a nonresident alien (or a nonresident, regardless of citizenship, if death occurred prior to the

enactment of the Revenue Act of 1934) the transfer must be included if the property was situated in the United States, either at the date of the decedent's death or at the date of the transfer. Reference is made to article 50 of Regulations No. 80.

(1) Did the decedent make any transfer described in the above first paragraph (including the six subparagraphs)? (Answer "Yes" or "No.") No

(2) Did the decedent, within 2 years immediately preceding his death, make any transfer of a material part of his property without an adequate and full consideration in money or money's worth? (Answer "Yes" or "No.") No

(3) Did the decedent, at any time, make a transfer of an amount of $5,000 or more without an adequate and full consideration in money or money's worth, but not believed to be includible in the gross estate as indicated in the above first paragraph (including the six subparagraphs)? (Answer "Yes" or "No.") No

(4) If the answer to question (3) is "Yes" state date, amount or value, character of transfer, and motive which actuated the decedent in making the transfer:

(5) Were there in existence at the time of the decedent's death any trusts created by him during his lifetime? (Answer "Yes" or "No.") Yes, a trust was made to indemnify certain other persons. That trust by its terms ended on July 1, 1935 and thereafter the Trustees delivered to the Executors of Decedent's Will all of the assets in said Trust. All of said assets are included in this return.

243 Schedule E—Continued

Item No.	Description of property transferred and details of transfer	Fair market value at date of death	Fair market value to be included in gross estate	Rents and other income accrued to date of death
		$	$	$
	None			
	Totals	$	$	$
	Grand Total (also enter under the Recapitulation, Schedule L)			$ None

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf. Date of death June 4, 1935.

244 **SCHEDULE F.**

Powers of Appointment.

Instructions.

Property passing under a general power of appointment must be disclosed under this schedule and the value included in the gross estate if exercised by the decedent (A) by will, or (B) by deed resulting in any of the transfers described in subparagraphs (1), (2), (3), and (4) of the first paragraph of the instructions under Schedule E; except in case of a bona fide sale for an adequate and full consideration in money or money's worth, or where the decedent died prior to the enactment of the Revenue Act of 1918.

If the power is exercised for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there should be included in the gross estate only the excess of the fair market value, at the time of the decedent's death, of the property passing under the power over the value of the consideration received by the decedent.

Only property passing under a general power should be included. Ordinarily a general power is one to appoint to any person or persons in the discretion of the donee (or appointor) of the power. If the donee is required to appoint to a specified person or class of persons, the property should not be included in his gross estate.

Duplicate copies of the instrument granting the power and of the instrument by which the power was exercised, one of each to be certified or verified, must be filed with the return, unless the decedent was a nonresident, in which case only one copy of each instrument, certified or verified, is required. The copies should be filed even though it is contended that the power was a limited one and the property passing thereunder is not returned as taxable.

For further instructions, see article 24, Regulations No. 80.

(1) Did the decedent, at any time, by will or otherwise, transfer property by the exercise of a general power of appointment? (Answer "Yes" or "No.") No

(2) Did the decedent, at any time, by will or otherwise, exercise a limited power of appointment? (Answer "Yes" or "No.") No

Item No.	Description and details	Fair market value at date of death	Rents and other income accrued to date of death
		$	$
	Totals	$	$
	Grand Total (also enter under the Recapitulation, Schedule L)	$ None	

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf. Date of death June 4, 1935.

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SCHEDULE G.

Property Previously Taxed.

Instructions.

Property received from a person who died within 5 years prior to the decedent's death or received by gift within 5 years prior to the decedent's death, or property acquired in exchange therefor, with respect to which a deduction is authorized because an estate tax was paid by the prior estate or a gift tax was paid by the donor, should be returned hereunder. The deduction for such property is authorized in accordance with the following conditions and limitations, if the decedent died after 5 p. m., eastern standard time, June 6, 1932 (if death occurred prior to that time see art. 41 of Regulations No. 80):

(a) Conditions:

(1) Property must have been received by the decedent by gift, bequest, devise, or inheritance from a prior decedent who died within 5 years of the decedent's death, or received by him as a gift within 5 years of his death.

(2) The property returned hereunder must be identified either as the same which the decedent so received or as property acquired in exchange therefor.

(3) The property so received must have formed a part of the gross estate situated in the United States of such prior decedent, or have been included in the total amount of gifts of the donor.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

(5) If the decedent died after 11:40 a. m., eastern standard time, May 10, 1934, no such deduction, in respect to the property or property exchange therefor, must have been allowable in determining the value of the net estate of the prior decedent.

(b) Limitations:

(1) The deduction is limited to the aggregate value of the property as finally determined in the case of the prior decedent or donor, or to the aggregate value of such property at the time of the decedent's death, whichever is the lower.

(2) The deduction, as limited in (1), is reduced by the total amount paid prior to the decedent's death on any mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in determining the estate tax of the prior decedent or the gift tax of the donor.

(3) The deduction is further reduced by the proportion of the total other deductions (allowable under Schedules H, I, J-1, J-2, and K, and the specific exemption if applicable) which the amount otherwise deductible for property previously taxed bears to the amount of the gross estate.

The description should show the schedule and item number of the property as it appeared in the prior return. To make it clear that the schedule and item number relate to the prior return, they should be included in parentheses. If only a portion of an item in the prior estate is reflected in the present estate, that fact should be indicated and only a proportionate part of the value of the item in the prior estate, as finally determined, should be entered in column 3. Any amount paid on a mortgage or other lien as described above in the second limitation, should be entered on the same line with the item of property involved.

It will be noted that the "Grand Total", the total of columns 1 and 2, constitutes the value of the property included in the gross estate.

The amount of the gross deduction for property previously taxed, in accordance with the first limitation, is entered at item *a*. The total of column 4 is entered at item *b* and subtracted from the amount of item *a*. The difference which is entered at item *c*, is the amount of the deduction as reduced in accordance with the second limitation. The amount of the net deduction for property previously taxed, as reduced by a certain proportion of the

total other deductions in accordance with the third limitation, is finally computed under Schedule M, N, or O.

For further instructions, see articles 41, 42, 43, and 53 of Regulations No. 80.

Example: The decedent died July 1, 1934. The value of his gross estate for the purpose of the estate tax is $1,000,000 of which $605,000 is the value of property previously taxed and $1,310 is the amount of rents and other income accrued thereon. The property previously taxed was inherited from his father who died on July 15, 1931, in whose estate its value was finally determined at $585,000. At the time of the father's death there was an unpaid mortgage of $60,000 on item 4 shown below which was deducted under Schedule J of the return for the father's estate. This mortgage was entirely paid before the son's death. The property previously taxed is set forth in Schedule G as follows:

Item No.	Description of property and of mortgages or other liens involved	Column 1	Column 2	Column 3	Column 4
1	Lots 7, 8, and 9, Block 875, in the subdivision known as "Belleview Addition" in the city of Washington as shown in the land records of the District of Columbia, liber 95, folio 220. (A-2)	$190,000	$130	$170,000	.....
2	Franklin Utility Co. bonds, 4¼ percent at $100. (B-3)	100,000	560	115,000	.....
3	1,000 shares Eastern R. R. Co., common, par 100 at 90. (B-4)	90,000	240	100,000	.....
4	Lots 41 and 42, Block 978, in the subdivision known as "Belleview Addition" in the city of Washington as shown in the land records of the District of Columbia, liber 97, folio 134. (A-6.) (Mortgage in prior return, item 2, Schedule J)	225,000	380	200,000	$60,000
	Totals	$605,000	$1,310	$585,000	$60,000
	Grand Total (total of column 1 plus total of column 2) (also enter under the Recapitulation, Schedule I.)				$606,310
a.	Gross deduction (total of column 1 or total of column 3, whichever is lower)				$585,000
b.	Total amount paid on mortgages or other liens deducted in prior estate or gift (total of column 4)				60,000
c.	Deduction for property previously taxed without proportionate reduction (item a minus item b)				$525,000

The total deductions, except for property previously taxed, including $100,000 for the specific exemption under the Revenue Act of 1926, aggregate $400,000. The pro-

portionate reduction in accordance with the third limitation, computed under Schedule M, is the proportion of the $400,000 that $525,000 bears to the amount of the gross estate, $1,000,000. $400,000 multiplied by 0.525 results in the proportionate reduction of $210,000. Therefore, the amount of the deduction allowable for property previously taxed in computing the net estate for tax under the 1926 act is $315,000.

As the 1932 act authorized a specific exemption of only $50,000, the total deductions, except for property previously taxed, allowed under the 1932 act, aggregate $350,000. The proportionate reduction in accordance with the third limitation, computed under Schedule N, is the proportion of $350,000 that $525,000 bears to the amount of the gross estate, $1,000,000. $350,000 multiplied by 0.525 results in the proportionate reduction of $183,750. Therefore, the amount of the deduction allowable for property previously taxed in computing the net estate for additional tax is $341,250.

Name of donor or prior decedent.....

If a decedent, show date of death.....

If a donor, show date of gift.....

Residence of donor at time of gift, or of prior decedent at time of death.....

246 Schedule G—(Continued)

Item No.	Description of property and of mortgages or other liens involved	(Column 1) Fair market value at date of present decedent's death	(Column 2) Rents and other income accrued to date of present decedent's death	(Column 3) Finally determined value in prior estate or gift	(Column 4) Amount paid on mortgage or other lien deducted in prior estate or gift
	None	$	$	$	$
	Totals.....	$	$	$	$ None

Grand Total (total of column 1 plus total of column 2) (also enter under the Recapitulation, Schedule L)..... $.....

a. Gross deduction (total of column 1 or total of column 3, whichever is lower)..... $.....

b. Total amount paid on mortgages or other liens deducted in prior estate or gift (total of column 4)..... $.....

c. Deduction for property previously taxed without proportionate reduction (item a minus item b)..... $ None

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf. Date of death June 4, 1933

247 DEDUCTIONS.

Schedule H.

Funeral and Administration Expenses.

Instructions.

Funeral expenses and administration expenses should be itemized, giving names and addresses of persons to whom payable, and exact nature of the particular expense. An item may be entered for deduction though the exact amount is not known at the time, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. Preserve all vouchers and receipts for inspection by an internal revenue agent.

Executor's or administrator's commission should be entered in the amount actually paid, or which it is reasonably expected will be paid, not to exceed the amount allowable by the laws of the jurisdiction wherein the estate is administered, and not in excess of the amount usually allowed in cases similar to that of this estate. Where the commission has not been awarded by the court, deduction on final audit is discretionary with the Commissioner, subject to future adjustment. Attorney's fee should be deducted in the amount paid, or to be paid. If the fee has not been paid at the time of the final audit, deduction is discretionary with the Commissioner, subject to future adjustment.

Estate, legacy, succession, and inheritance taxes, and taxes on income received after death, are not deductible. Deduction for property taxes is limited to such taxes as accrued prior to the decedent's death. Credit to a limited extent may, under Schedule P, Computation of Tax, be claimed for estate, legacy, succession, inheritance, and gift taxes.

For further instructions, see articles 29 to 35, inclusive, and article 52 of Regulations No. 80.

Item No.		Amount of item	Totals
	Funeral expenses:		
	Rabbi Joseph Stolz	$ 100.00	
	Rabbi Gerson B. Levi	100.00	
	The Berz Co., funeral directors	780.00	
	George Wienhoeber, Inc.—Flower casket cover	255.00	
	Walter B. Wolf—Limousines	84.00	
	Rosehill Cemetery Co.—Interring remains, decorations, rent of chapel, perpetual care of graves	2,781.88	
	J. H. Anderson Monument Co.—Grave marker, inscription, and cleaning	235.81	
	Marshall Field & Co.—Acknowledgments	24.99	
	Total Funeral Expenses (also enter under Schedule L)		$ 4,359.68
	Executors' commissions, estimated (also enter under Schedule L)		$200,000.00
	Attorneys' fees, estimated (also enter under Schedule L)		$
	Miscellaneous administration expenses: See Attached Schedule		
	Total Miscellaneous Administration Expenses (also enter under Schedule L)		$ 4,173.54

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf. Date of death June 4, 1935.

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Schedule H.

Administration Expenses.

Item No.	Description	Amount
1.	The Chicago Tribune, death notice	$ 5.40
2.	Chicago Daily News, death notice	6.96
3.	Chicago American, death notice	3.90
4.	Chicago Herald & Examiner, death notice	4.80
5.	Expense Re: Appraisal of goods and chattels	1.00
6.	Ward T. Huston & Co., Real Estate appraisal	150.00
7.	Photostatic, printed, typewritten copies of Will, Letters, Inventory; Insurance and Postage, transfer tax	1,728.44
8.	Kipp-Nelson Co.—Appraisal of goods and chattels	175.00
9.	Transportation of goods and chattels	2.90
10.	Taxi Fare	.75
11.	The Northern Trust Safe Deposit Co.—Box rental	7.70
12.	Empire Warehouse—Cartage	12.50
13.	Eliel & Loeb Co.—Insurance (3 items)	187.50
14.	Critchell, Miller, Whitney and Barbour—Insurance (2 Items)	61.65
15.	Simon T. Sutton—Guardian Ad Litem	100.00
16.	Winnamac Hotel—Rent	600.00

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17.	Hotel Windermere—Rent	500.00
18.	Commonwealth Edison Co.—Service	5.04
19.	Mrs. Mollie Morris—Cleaning Apartment	10.00
20.	Clarence Coney—Cleaning Apartment	5.00
21.	Van L. Coney—Cleaning Apartment	5.00
22.	Estimated closing costs, expenses, and transfer taxes	600.00
	Total Administration Expenses	$4,173.54

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SCHEDULE I.

Debts of Decedent.

Instructions.

Itemize fully below all valid debts of the decedent owed by him at the time of death. If the amount of the debt is disputed or the subject of litigation, only such amount may be deducted as the estate concedes to be a valid claim. If the claim is contested, that fact should be stated. If the claim is founded upon a promise or agreement the deduction is limited to the extent that the liability was contracted bona fide for an adequate and full consideration in money or money's worth. A pledge or a subscription evidenced by a promissory note or otherwise, even though enforcible against the estate, is deductible only to the extent that such pledge or subscription was made bona fide for an adequate and full consideration in cash or its equivalent. The deduction for property taxes is limited to such taxes as accrued prior to the date of the decedent's death. Federal taxes on income received during decedent's lifetime are deductible but taxes on income received after death are not deductible.

Enter in this schedule notes unsecured by mortgage and give full details, including name of payee, face and unpaid balance, date and term of note, interest rate and date to which interest was paid prior to death. Care must be taken to state the exact nature of the claim as well as the name of the creditor. If the claim is for services rendered over a period of time, state the period covered by the claim. Example: Edison Electric Illuminating Co. for electric service during December 1934, $25.

All vouchers or original records should be preserved for inspection by an internal-revenue agent.

For further instructions, see articles 29, 30, 36, 37, and 52, of Regulations No. 80.

Item No.	Creditor and nature of claim	Amount
		$
	See Attached Schedule	

Total (also enter under the Recapitulation, Schedule L) $81,527.22

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf Date of death June 4, 1935.

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SCHEDULE I.

Debts of Decedent.

Item No.	Description		Amount
1.	Debts and Funeral Expenses		
	Mary E. Kaufman, to reimburse for following debts of decedent:		
	a. B. Norstrum, Nurse	$ 6.00	
	b. Bess Ann Logan, Nurse	505.35	
	c. Jennie Spoelstra, Nurse	6.00	
	d. Carolyn Lindquist, Nurse	205.30	
	e. Florence Wenz, Nurse	6.00	
	f. Irene Eby, nurse	18.00	
	g. The Presbyterian Hospital	675.83	
	h. Emil A. Hofer, blood donor	35.00	
	i. J. P. Motley, blood donor	35.00	
	j. Ray Jacobsen, hospital orderly	30.00	
	k. Mat Baxter, Assistant hospital orderly	5.00	
	l. Dr. Isaac R. Pels, professional services	20.00	
	m. Allie M. Anderson, May rent for apartment	60.00	
	n. Commonwealth Edison Co.	.50	
	o. Davies Laundry Co. for Laundry	4.34	
	p. The Attic, house account	4.08	
	q. The Orientals, dues	25.00	
	r. Friends of the Library, dues	25.00	
	s. University Club of Chicago, House Account	7.54	
	t. South Shore Country Club, dues	14.77	
	u. Capper and Capper, Ltd., for merchandise	7.14	
	v. George Wienhober, Inc., for Easter Flowers	115.74	
	w. Borden's Farm Products Co. for milk	.92	
	x. Hobbs & Sutphen, for gift	3.42	
	y. University of Chicago Press, for books	30.00	
	z. Interest collected and held by decedent for Mary E. Kaufman	90.00	$1,935.93
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2.	Dr. Oliver S. Ormsby, for professional services		$2 500.00
3.	Dr. Wilbur E. Post, for professional services		100.00
4.	Dr. Arthur Dean Bevan, for professional services		20.00
5.	Dr. William Allen Pusey, for professional services		50.00
6.	Dr. Udo J. Wile, Ann Arbor, for professional services		300.00
7.	Dr. Edwin M. Miller, for professional services		250.00
8.	Wright & Lawrence, for drugs		2.53
9.	Otto Schmidt Wine Co. for Vichy Water		8.82
10.	Soutn Shore Country Club—dues and assessments		14.77
11.	Winnamac Hotel—June Rent		60.00
12.	Hotel Windermere—April, May and June Rent		750.00
13.	Hotel Windermere—Incidentals		24.63
14.	1934 Income Tax—3 Final installments		14,499.00
15.	1935 Income Tax—Period Prior to death (Paid $4,167.38, deficiency $1,189.19. Estimated interest $143.43)		5,500.00
16.	1934 Personal Property Tax—2 Items		118.55
17.	1935 Personal Property Tax—Estimated		15,123.98
253 18.	Price Waterhouse & Co., Services Re 1931 Income Tax		534.72
19.	1933 Income Tax deficiency		469.84
20.	1934 Real Estate Taxes on Item 1—Schedule A (Paid)		191.86
21.	1935 Real Estate Taxes on Item 1—Schedule A (Estimated)		191.86
22.	1934 Real Estate Taxes on Item 2—Schedule A (Paid)		6.03
23.	1935 Real Estate Taxes on Item 2—Schedule A (Estimated)		6.03
24.	Commonwealth Edison Co., Electricity		1.00

Item No.	Description	Amount
25.	Jewish Charities of Chicago—Balance of subscription	6,000.00
26.	University of Chicago—Balance of fellowship	250.00
27.	Real Estate Taxes underlying Item 272, Schedule C-1 included in cash balance in checking account	232.04
28.	Liability on Foreman State Bank Stock—$49 per share—75 shares	3,675.00
29.	Prepaid interest on Items 216, 217—Schedule C-1 included in cash balance in checking account	895.83
30.	1934 Income Tax Deficiency	284.72
31.	Estimated deficiency in 1931 Income Tax	25,000.00
32.	Estimated additional accountant's fees in re: 1931 Income Tax	2,500.00
254 33.	Judah, Reichmann, Trumbull, Cox, and Stern Cash advancements	30.00
	Total Schedule I	$81,527.22

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SCHEDULE J-1.

Mortgages.

Instructions.

Give location of property, name of mortgagee, date and term of mortgage, face amount, unpaid balance, rate of interest, date to which interest was paid prior to death. Identify by item number, as listed in Schedule A, the property securing each mortgage. Enter in fourth column interest accrued to date of death. Mortgages upon, or an indebtedness in respect to, property included in the gross estate is deductible only to the extent that the liability for the mortgage or indebtedness was contracted bona fide and for an adequate and full consideration in money or money's worth. Unsecured notes should be listed under Schedule I.

For further instructions, see articles 29, 30, 38, and 52, of Regulations No. 80.

Item No.	Mortgages	Unpaid amount at date of decedent's death	Interest accrued to date of death
	None	$	$
	Totals	$	$
	Grand Total (also enter under the Recapitulation, Schedule L)		$ None

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf Date of death June 4, 1935

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SCHEDULE J-2.

Net Losses and Support of Dependents.

Instructions.

Losses—Losses are strictly limited to those arising from fire, storm, shipwreck, or other casualty, or from theft, to the extent that such losses are not compensated for by insurance or otherwise. Losses must occur during the settlement of the estate. Depreciation in the value of securities or other property does not constitute a deductible loss. In the case of a decedent who died subsequent to the effective date of the Revenue Act of 1932, such losses are not deductible if, at the time of the filing of the estate tax return, such losses had been claimed as a deduction for income tax purposes in an income tax return. In listing losses, full particulars must be given not only as to the loss sustained, but the cause thereof, and in the case of death of livestock, the cause of death must be stated, if known. If insurance or other compensation was received on account of loss, state the amount collected.

Support of dependents.—No deduction may be taken for support of dependents unless the local law permits the allowance, the local court has made a decree specifying the amount thereof, and in fact the allowance was reasonably required for the support of the person in question during the settlement of the estate, and actual disbursement was made from the assets of the estate to the dependents.

For further instructions, see articles 29, 39, 40, and 52 of Regulations No. 80.

Item No.	Net Losses during administration	Amount
		$
	None	
	Total (also enter under the Recapitulation, Schedule L)	$ None

(If more space is needed, insert additional sheets of same size)

Item No.	Support of dependents	Amount
		$
	None	
	Total (also enter under the Recapitulation, Schedule L)	$ None

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf Date of death June 4, 1935

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SCHEDULE K.

Charitable, Public, and Similar Gifts and Bequests.

Instructions.

Deductions authorized for charitable, public, and similar gifts and bequests as set forth in Regulations No. 80 should be claimed under this schedule. If the transfer was made by will, duplicate copies, one certified, of the order admitting the will to probate, in addition to the copies of the will, should be submitted with the return. If the transfer was made by any other written instrument, duplicate copies thereof should be submitted with the return, and if the instrument is of record one copy should be certified and if not of record one copy should be verified. If the transfer was made by will, an affidavit of the executor must be submitted, showing whether the decedent's will has been, or to the best of his knowledge, information, and belief will be contested. If claim is made for deduction of the value of the residue or of a portion thereof (e. g., present worth of a remainder interest in the residue), there should be submitted a copy of the computation whereby the value was determined.

Where the decedent died after the enactment of the Revenue Act of 1932, and under the terms of the will or the law of the jurisdiction wherein the estate is administered or the law of the jurisdiction imposing the particular tax, the Federal estate tax (including the additional estate tax imposed by the Revenue Act of 1932) or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible hereunder, the sum deductible is the amount of such bequest, legacy, or devise so reduced.

See articles 44 to 47, inclusive, and article 54 of Regulations No. 80.

Item No.	Name and address of beneficiary	Character of institution	Amount
			$
	See Attached Schedule C		
	Total (also enter under the Recapitulation, Schedule L)		$ 1,655,650.73

(If more space is needed, insert additional sheets of same size)

Estate of Henry M. Wolf — Date of death June 4, 1935.

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SCHEDULE K.

Charitable Bequests.

Gross Estate				$ 4,238,805.97
Less: Funeral Expenses		$ 4,359.68		
Administration Expense		4,173.54		
Debts and Claims		81,527.22		
Executor's Fees)				
Attorneys' Fees)		200,000.00		290,060.44
Net Estate for Distribution and Taxes				$ 3,948,745.53
Less: Specific Bequests and Legacies other than charitable:				
Article Second—Bequests:				
1. Agnes Wolf Stern		$ 1,379.40		
2. Bertha Wolf Raymondaud		1,379.40	$ 2,758.80	
Articles Third and Fourth:				
1. Guy E. Summers				
Legacy (Third)	$ 3,700.00			
Legacy (Fourth)	15,000.00	$ 18,700.00		
2. Jessie Cook				
Legacy (Third)	2,100.00			
Legacy (Fourth)	10,000.00	12,100.00		
3. Mary E. Kaufman				
Legacy (Third)	2,500.00			
Legacy (Fourth)	50,000.00	52,500.00		
4. Lester G. Britton				
Legacy (Third)		1,100.00		
5. Lucille G. Moir				
Legacy (Third)		800.00		
Forwarded		$ 85,200.00	$ 2,758.80	$3,948,745.53

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Forwarded		$ 85,200.00	$ 2,758.80	$3,948,745.53
6. Alice G. McIntyre				
Legacy (Third)		800.00		
7. Dorothy Gold				
Legacy (Third)		700.00		
8. Phyllis Vesrinek				
Legacy (Third)		600.00		
9. Harry Schill				
Legacy (Third)		600.00		
10. Donald B. Dodd				
Legacy (Third)		500.00		
11. Alice Cronin				
Legacy (Third)		400.00		
12. Florence Dietz Wickersheim				
Legacy (Third)		400.00		
13. Randolph Thornton				
Legacy (Third)		400.00		
14. Mabel Rauch				
Legacy (Third)		400.00		

15. Myron D. Davis Legacy (Third)	400.00		
16. Helen Stanchfield Legacy (Third)	300.00		
17. Eleanor V. Hageman Legacy (Third)	200.00	90,900.00	
Article Fifth—Bequests:			
1. Mary E. Kaufman	$ 141.00		
2. Alexander F. Reichmann	100.00		
3. Donald S. Trumbull	24.00		
4. Noble Brandon Judah	100.00		
5. Arthur M. Cox	55.00		
6. Oscar D. Stern	18.00	438.00	
Forwarded		$ 94,096.80	$ 3,948,745.53
260 Forwarded		94,096.80	$ 3,948,745.53
Article Sixth—Legacies:			
1. John Alfred Stern	$ 10,000.00		
2. Nancy Agnes Stern	10,000.00		
3. Thomas Whital Stern	10,000.00		
4. Nancy Laure Raymondaud	10,000.00	40,000.00	
Article Seventh—Legacies:			
1. Frederick W. Gookin	$ 3,000.00		
2. William E. Dodd	5,000.00		
3. Thomas P. Heaphy	1,000.00		
4. Michael Collins	1,000.00	12,000.00	
Article Eighth—Legacies:			
1. Mrs. Hattie Judas	$ 10,000.00		
2. Helen Bendet	5,000.00		
3. Mattie Bendet	5,000.00		
4. Valerie Dreyfus	5,000.00	25,000.00	
Article Ninth—Legacies:			
1. Agnes Wolf Stern	$100,000.00		
2. Bertha Wolf Raymondaud	100,000.00		
3. Walter B. Wolf	100,000.00	300,000.00	
Forwarded		$ 471,096.80	$ 3,948,745.53
261 Forwarded		$ 471,096.80	$ 3,948,745.53
Article Eleventh—Annuities:			
1. Jeanette Wolf Age 90; Factor 1.4854 ($1,500. x 1.4854 x 1.01488)	$ 2,261.25		
2. Hattie Judas Age 64; Factor 8.14888 ($1,500. x 8.14888 x 1.01488)	12,405.20		
3. Priscilla Wolf Age 75; Factor 4.91463 ($1,500. x 4.91463 x 1.01488)	7,481.64		
4. Henry J. Wolf Age 74; Factor 5.18402 ($1,500. x 5.18402 x 1.01488)	7,891.74		
5. Mrs. Benjamin Tuska Age 56; Factor 10.66982 ($1,500. x 10.66982 x 1.01488)	16,242.88	$ 46,282.71	

Article Twelfth:			
1. Life Estate of Agnes Wolf Stern in Trust of $1,200,000. Age 48; Factor 13.03942 ($1,200,000. x .04 x 13.03942 x 1.01488)	$635,205.44		
2. Present worth of three $250,000. legacies payable upon the death of Agnes Wolf Stern who is age 48 (3 x $250,000. x .46002)	345,015.00	$ 980,220.44	
Forwarded		$ 1,497,599.95	$ 3,948,745.53
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Forwarded		$ 1,497,599.95	$ 3,948,745.53
Article Thirteenth:			
1. Life Estate of Bertha Wolf Raymondaud in Trust of $250,000. Age 43; Factor 14.37356 ($250,000. x .04 x 14.37356 x 1.01488)	$145,874.39		
2. Present worth of a $100,000. legacy payable upon the death of Bertha Wolf Raymondaud, who is age 43 ($100,000. x .40871)	40,871.00	186,745.39	
Article Fourteenth:			
Life estate of Walter B. Wolf in a trust of $250,000. Age 48; Factor 13.03942 x 1.01488 ($250,000. x .04 x 13.03942 x 1.01488)		132,334.47	
Total Specific Bequests and Legacies other than charitable			$ 1,816,679.81
			$ 2,132,065.72
Less:			
Illinois Inheritance Tax on legacies under Articles Third and Fourth		$ 9,670.46	
Illinois Inheritance Tax on the annuities and the life estates under Articles Eleventh, Twelfth, Thirteenth and Fourteenth		147,874.73	
Federal Estate Tax computed under the 1926 Act and 1932 (and 1934) Act without reference to the 1932 Amendment, Section 807		317,869.80	475,414.99
Net Charitable Bequests			$ 1,656,650.73

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SCHEDULE L.

Recapitulation.

Schedule	Gross Estate	Value
A	Real estate	$ 5,600.00
B	Stocks and bonds (grand total of all pages of this schedule)	3,706,633.22
C-1	Mortgages, notes, and cash	468,946.69
C-2	Insurance	6,464.27
D-1	Jointly owned property	—
D-2	Other miscellaneous property	51,161.79
E	Transfer	—
F	Powers of appointment	—
G	Property previously taxed	—
	Total Gross Estate	$4,238,805.97

Schedule	Deductions	Amount
H	Funeral expenses	$ 4,859.68
	Administration expenses:	
	Executors' commissions	
	Attorneys' fees	200,000.00
	Miscellaneous	4,173.54
I	Debts of decedent	81,527.22
J-1	Unpaid mortgages	—
J-2	Net losses during administration	—
	Support of dependents	—
K	Charitable, public, and similar gifts and bequests	1,656,650.73
	Total Deductions, except specific exemption and property previously taxed	$1,946,711.17

SCHEDULE M.

Net Estate for Tax Imposed by Revenue Act of 1926—Resident or Citizen.

Instructions.—This schedule should be used only for the estate of a resident or citizen of the United States, except that if death occurred prior to the enactment of the Revenue Act of 1934 it should not be used for the estate of a nonresident citizen of the United States.

1.	Total gross estate		$4,238,805.97
2.	Total deductions, except exemption and property previously taxed	$1,946,711.17	
3.	Specific exemption	100,000.00	
4.	Total deductions, except property previously taxed (item 2 plus item 3)	$2,046,711.17	
5.	Deduction for property previously taxed without proportionate reduction (Schedule G, Item c)	$	
6.	Proportionate reduction (proportion of item 4 that item 5 bears to item 1)	$	
7.	Net deduction for property previously taxed (item 5 minus item 6)	$	
8.	Total deductions (item 4 plus item 7)		$2,046,711.17
9.	Net estate (item 1 minus item 8)		$2,192,094.80

Estate of Henry M. Wolf Date of death June 4, 1935.

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SCHEDULE N.

Net Estate for Additional Tax Imposed by Revenue Act of 1932—Resident or Citizen.

Instructions.—This schedule should be used only for the estate of a resident or citizen of the United States, except that if death occurred prior to the enactment of the Revenue Act of 1934 it should not be used for the estate of a nonresident citizen of the United States.

1. Total gross estate			$4,238,806.97
2. Total deductions, except specific exemption and property previously taxed		$1,946,711.17	
3. Specific exemption		50,000.00	
4. Total deductions, except property previously taxed (item 2 plus item 3)		$1,996,711.17	
5. Deduction for property previously taxed without proportionate reduction (Schedule G, item e)	$		
6. Proportionate reduction (proportion of item 4 that item 5 bears to item 1)	$		
7. Net deduction for property previously taxed (item 5 minus item 6)		$	
8. Total deductions (item 4 plus item 7)			1,996,711.17
9. Net estate (item 1 minus item 8)			$2,242,094.80

SCHEDULE O.

Net Estate—Nonresident Alien.

Instructions.—This schedule should be used only for the estate of a nonresident alien of the United States, except that if death occurred prior to the enactment of the Revenue Act of 1934 it should also be used for the estate of nonresident citizen of the United States. No deductions are allowable hereunder unless the value of that part of the gross estate situated outside the United States is set forth.

1. Value of gross estate in the United States (Schedules A, B, C-1, D-1, D-2, E, F, and G)	$	
2. Value of gross estate outside the United States (attach itemized schedule showing values)		
3. Value of total gross estate wherever situated (item 1 plus item 2)	$	
4. Gross deductions under Schedules H, I, J-1, and J-2		
5. Net deductions under Schedules H, I, J-1, and J-2 (that proportion of item 4 that item 1 bears to item 3)	$	
6. Charitable, public, and similar gifts and bequests, Schedule K		
7. Total deductions, except property previously taxed (item 5 plus item 6)	$	
8. Deduction for property previously taxed without proportionate reduction (Schedule G, item e)	$	
9. Proportionate reduction (proportion of item 7 that item 8 bears to item 1)	$	

10. Net deduction for property previously taxed (item 8 minus item 9) ..... $.....

11. Total deductions (item 7 plus item 10) ..... $.....

12. Net estate (item 1 minus item 11) ..... $.....

Estate of Henry M. Wolf. Date of death June 4, 1935.

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Schedule P.

Computation of Tax.

Table for Computing Estate Tax.

(A)	(B)	(1) In effect on and after May 11, 1934. (Tentative tax, 1932 act as amended.) Total taxes imposed by 1926 act and by 1932 act as amended by 1934 act		(2) In effect from 5 p. m., eastern standard time, June 6, 1932, to May 10, 1934, inclusive. (Tentative tax, 1932 act.) Total taxes imposed by 1926 act and by 1932 act		(3) In effect after 10:25 a. m., eastern standard time, Feb. 26, 1926. Revenue Act of 1926	
Net estate equaling—	Net estate not exceeding—	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)
			Percent		Percent		Percent
.....	$10,000	.....	1	.....	1	.....	1
$10,000	20,000	$100	2	$100	2	$100	1
20,000	30,000	300	3	300	3	200	1
30,000	40,000	600	4	600	4	300	1
40,000	50,000	1,000	5	1,000	5	400	1
50,000	70,000	1,500	7	1,500	7	500	2
70,000	100,000	2,900	9	2,900	7	900	2
100,000	200,000	5,600	12	5,000	9	1,500	3
200,000	400,000	17,600	16	14,000	11	4,500	4
400,000	600,000	49,600	19	36,000	13	12,500	5
600,000	800,000	87,600	22	62,000	15	22,500	6
800,000	1,000,000	131,600	25	92,000	17	34,500	7
1,000,000	1,500,000	181,600	28	126,000	19	48,500	8
1,500,000	2,000,000	321,600	31	221,000	21	88,500	9
2,000,000	2,500,000	476,600	34	326,000	23	133,500	10
2,500,000	3,000,000	646,600	37	441,000	25	183,500	11
3,000,000	3,500,000	831,600	40	566,000	27	238,500	12
3,500,000	4,000,000	1,031,600	43	701,000	29	298,500	13
4,000,000	4,500,000	1,246,600	46	846,000	31	363,500	14
4,500,000	5,000,000	1,476,600	48	1,001,000	33	433,500	14
5,000,000	6,000,000	1,716,600	50	1,166,000	35	503,500	15
6,000,000	7,000,000	2,216,600	52	1,516,000	37	653,500	16
7,000,000	8,000,000	2,736,600	54	1,886,000	39	813,500	17
8,000,000	9,000,000	3,276,600	56	2,276,000	41	983,500	18
9,000,000	10,000,000	3,836,600	58	2,686,000	43	1,163,500	19
10,000,000	.....	4,416,600	60	3,116,000	45	1,353,500	20

Instructions.

Item 1, "Gross tax imposed by 1926 act", is computed by means of column 3 of the above table on the value of the net estate shown under Schedule M or Schedule O, as the case may be.

Item 2, "Credit for gift tax imposed by 1924 and/or 1932 act", is allowed if paid by the decedent in respect of property included in the gross estate. If such gift tax was imposed by the Revenue Act of 1924, the entire amount is allowed. If such gift tax was imposed by the Revenue Act of 1932, the credit cannot exceed the proportion of the gross estate tax, item 1, that the value of the included gift bears to the entire gross estate. (See art. 9(a) of Regulations No. 80.)

Item 4, "Credit for estate, inheritance, legacy, or succession tax", cannot exceed 80 percent of item 3. (See art. 9(b) of Regulations No. 80.)

Item 6, "Total gross taxes imposed by 1926 and 1932 acts", is computed on the value of the net estate shown under Schedule N or Schedule O, as the case may be. If the decedent died on or after May 11, 1934, column 1 of the above table should be used for this item. If the decedent died prior to May 11, 1934, and after the enactment of the Revenue Act of 1932, column 2 of the above table should be used for this item.

Item 9, "Credit for gift tax imposed by 1932 act", is allowed if paid by the decedent in respect of property included in the gross estate. Such credit cannot exceed the proportion of the gross additional estate tax that the value of the included gift bears to the entire gross estate; and furthermore cannot exceed the difference between the total amount of the gift tax and the gift tax credit allowed against the gross estate tax imposed by the 1926 act. (See art. 9(a) of Regulations No. 80.)

Item 11, "Total net tax", is the sum of the net estate tax imposed by the Revenue Act of 1926 and the net additional estate tax imposed by the Revenue Act of 1932.

If the decedent died prior to the enactment of the Revenue Act of 1926 consult table II of Regulations No. 80 for the computation of the tax.

For further instructions, see articles 6 to 9, inclusive, of Regulations No. 80.

Example (estate subject to both tax imposed by Revenue Act of 1926 and additional tax imposed by Revenue Act of 1932, as amended, and involving credit for State inheritance and estate taxes): A resident decedent died August 15, 1934, and the value of the net estate shown under Schedule M is $210,000. The tax shown in the first subcolumn of column 3 of the above table on a net estate equaling $200,000 is $4,500. As $210,000 exceeds $200,000 and falls below $400,000, the tax

on the excess of $10,000 is computed at the rate of 4 percent, the rate shown in the second subcolumn of column 3. The $400 tax on such excess added to $4,500 gives $4,900, the gross tax imposed by the Revenue Act of 1926, which should be entered at item 1. Credit for gift tax is not involved in this example, but it will be assumed that the maximum amount of credit for State estate, inheritance, legacy, or succession taxes is allowable; that is, 80 percent, or $3,920, which should be entered at item 4. The difference, which is the net tax imposed by the Revenue Act of 1926, is $980. The net estate shown under Schedule N is $260,000. The amount of the total gross taxes
266 imposed by the 1926 act and 1932 act, as amended by the 1934 act, shown in the first subcolumn of column 1 on a net estate equaling $200,000, is $17,600. As $260,000 exceeds $200,000 and falls below $400,000, the amount of the total gross taxes on the excess of $60,000 is computed at 16 percent, the rate shown in the second subcolumn of column 1. The $9,600, computed on such excess, added to $17,600, gives $27,200, the total gross taxes imposed by the 1926 act and 1932 act, as amended by the 1934 act, and $27,200 should be entered at item 6. From the $27,200 is subtracted $4,900, the gross tax imposed by the Revenue Act of 1926, and the difference, $22,300, is the gross additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1934, which amount should be entered at item 8. As in this example no credit for gift tax is involved, the gross additional tax is the same as the net additional tax. The net tax imposed by the Revenue Act of 1926, $980, item 5, added to the net additional tax, $22,300, item 10, results in a total net tax of $23,280, item 11. The computation of the tax in this example is set up as follows:

1. Gross tax imposed by 1926 act	$4,900	
2. Credit for gift tax imposed by 1924 and/or 1932 act	0	
3. Gross tax less credit for gift tax	$4,900	
4. Credit for estate, inheritance, legacy, or succession tax	3,920	
5. Net tax imposed by 1926 act		$980
6. Total gross taxes imposed by 1926 and 1932 acts (Tentative Tax, 1932 Act)	$27,200	
7. Gross tax imposed by 1926 act	4,900	
8. Gross additional tax	$22,300	
9. Credit for gift tax imposed by 1932 act	0	
10. Net additional tax		22,300
11. Total net tax		$23,280

Example (estate subject to additional estate tax only): A resident decedent died September 1, 1934, and the value of the gross estate is $85,000. Deductions for administration expenses and debts are allowed

in the amount of $10,000, leaving $75,000 before the deduction of the specific exemption. As the specific exemption allowed by the Revenue Act of 1926 is $100,000, it is apparent under Schedule M that this estate is not subject to the estate tax imposed by that act. However, as the specific exemption allowed by the Revenue Act of 1932 is only $50,000, this estate is subject only to the additional estate tax imposed by the latter act. For the purpose of the additional estate tax the net estate is $25,000, shown under Schedule N. The total gross taxes imposed by the 1926 act and the 1932 act, as amended by the 1934 act, shown in the first subcolumn of column 1 on a net estate equaling $20,000 are $300. As $25,000 exceeds $20,000 and falls below $30,000, the amount of the total gross taxes on the excess of $5,000 is computed at the rate of 3 percent, the rate shown in the second subcolumn of column 1. The $150, computed on such excess, added to $300, gives $450, the total gross taxes imposed by the 1926 act and the 1932 act, as amended by the 1934 act. As no estate tax is imposed by the Revenue Act of 1926, this amount is the same as the gross additional tax. As credit for gift tax is not involved in this example, the gross additional tax is the same as the net additional tax. It will be noted that no credit for estate, inheritance, legacy, or succession taxes is allowed in the computation of the additional tax imposed by the Revenue Act of 1932, and consequently the total net tax in this case is $450.

COMPUTATION OF TAX.

1.	Gross tax imposed by 1926 act	$152,709.48	
2.	Credit for gift tax imposed by 1924 and/or 1932 act	.....	
3.	Gross tax less credit for gift tax (1 minus 2)	$152,709.48	
4.	Credit for estate, inheritance, legacy, or succession tax	122,167.58	
5.	Net tax imposed by 1926 act (3 minus 4)		$ 30,541.90
6.	Total gross taxes imposed by 1926 and 1932 acts (Tentative Tax, 1932 Act)	$558,912.23	
7.	Gross tax imposed by 1926 act	152,709.48	
8.	Gross additional tax (6 minus 7)	$406,202.75	
9.	Credit for gift tax imposed by 1932 act	.....	
10.	Net additional tax (8 minus 9)		406,202.75
11.	Total net tax (5 plus 10)		$436,744.65

Estate of Henry M. Wolf. Date of death June 4, 1935

267 **General Information.**

Place of death Chicago, Illinois Did decedent die testate? Yes.

Cause of death Chronic Dermatitis Length of last illness Two Months.

Date of birth November 15, 1860 Place of birth Rock Island, Illinois.

Business or occupation Lawyer.

Business address 134 South La Salle Street, Chicago Number of children None.

Married, single, separated, widowed, or divorced at date of death? Single Were letters testamentary or of administration granted for this estate? Yes Date granted August 22, 1935.

Name and location of court Probate Court of Cook County, Chicago, Ill.

To whom granted? (Explain if different from the undersigned person or persons filing return) Mary E. Kaufman and The Northern Trust Company.

Did the undersigned person or persons filing return make diligent and careful search for property of every kind left by the decedent? Yes Did the same undersigned make diligent and careful search for information as to any transfers of the value of $5,000 or more made by the decedent during his lifetime without an adequate and full consideration in money or money's worth? Yes.

Name and address of attorney representing estate, if any Judah, Reichmann, Trumbull, Cox & Stern, 134 South La Salle Street, Chicago, Ill.

Affidavit of Person or Persons Filing Return.

We Mary E. Kaufman and W. C. Weidert, Assistant Secretary of The Northern Trust Company, the undersigned executors swear (or affirm) that we have carefully examined this return (including the attached schedules and statements, if any); that to the best of our knowledge, information, and belief, herein is listed all of the property comprising the decedent's gross estate, as defined by the statute, or if the decedent was a nonresident alien of the United States (or a nonresident, regardless of citizenship, if he died prior to the enactment of the Revenue Act of 1934), herein is listed all of the property comprising the gross estate situated in the United States, as defined by the statute; that we have no knowledge of any transfers made or trusts created by the decedent during his lifetime of the value of $5,000 or more, other than bona fide sales for an adequate and full consideration in money or money's worth, except as stated in Schedule E; and that, to the best of our knowledge, information, and belief, the value shown for each item of property listed herein was the fair market value at the date of the decedent's death, that the debts, expenses, and charges entered herein as deductions from the gross estate are correct and legally allowable, and that all statements made herein are true and correct.

Notarial Seal

Sworn to and subscribed before me this 28th day of May, 1936.

Sg. Alden,
(Signature and title of officer administering oath)
Notary Public.
My Commission expires April 8, 1940.

(Signature) Mary E. Kaufman,
Co-Executrix of the Estate of Henry M. Wolf, Deceased.
134 South La Salle Street,
Chicago.

The Northern Trust Company,
Co-Executor of the Estate of Henry M. Wolf, Deceased.
By W. C. Weidert,
Assistant Secretary.
(Address) 50 South La Salle Street,
Chicago.

Affidavit of Attorney or Agent Preparing Return.

I swear (or affirm) that I prepared this return for the person or persons signing the above affidavit and that this return, including the attached schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the estate tax liability of this estate of which I have any knowledge.

Notarial Seal	Sworn to and subscribed before me this .....day of ....., 193....	(Signature) ..... (Address) .....

(Signature and title of officer administering oath)

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(Space for Use of Bureau).

Tax on Return or Deficiency	Assessments				Payments		
	Amount	List	Page	Line	Date	Principal	Interest
RT	436744.65	36 May 37	103	2	5-28-36	436744.65	
DT	23,134.92	Oct.	100	5			
Int.	1934.46	2nd Supple.					

Determination by Bureau.

268½ Mr. Ziffren: And I think the record will show, your Honor, that the parties have stipulated that the court may take judicial notice of all Congressional reports in connection with the legislation involved, as well as regulations of the Treasury Department.

The Court: That is the law, anyhow.

Mr. Ziffren: I think it is the law.

Mr. Reichmann: I am not certain about that.

The Court: I think it is.

Mr. Reichmann: Now, I take it that will be subject to

all of our objections as to the materiality and relevancy because, if your Honor please, my understanding of the
rule is that where a statute is unambiguous and clear
269 in its terminology you cannot introduce the reports
of Congressional committees for the purpose of so-called elucidation. The Act will speak for itself. They are only admissible, in any event, where there is reasonable question or doubt as to the intent taken from the Act, taken from the language of the Act and we may want to urge—

The Court: I think possibly that is the rule.

Mr. Reichmann: Yes.

The Court: That in case of ambiguity the court may examine the reports of committees.

Mr. Reichmann: That is right.

The Court: And the general history of the Act.

Mr. Ziffren: Yes.

The Court: Together with the regulations.

Mr. Ziffren: The government does not at all contend that this statute is ambiguous. We simply want it clear that if the court finds it ambiguous the court may examine anything it desires.

Mr. Reichmann: Well, that is the same thing.

Mr. Ziffren: All right.

Mr. Reichmann: We do not think the Act is ambiguous either; on the contrary, that he who runs may read.

Mr. Ziffren: That is all. Your Honor, so far as
270 the filing of briefs in this case is concerned, I think it
was the understanding that the briefs were to be filed first and then, if your Honor desired oral argument you would set a date.

Mr. Reichmann: Your Honor, we are running into the holiday season and I wonder whether your Honor would give the plaintiffs thirty days?

The Court: Well, I know more about this right now than I will thirty days from now. You have presented the case pretty thoroughly, but haven't you quite a simple proposition here?

Mr. Ziffren: We have tried to make a complicated situation very simple and I think your Honor understands it.

The Court: Now, if you have a gross estate, say, of a hundred thousand dollars, you have debts of ten thousand, you have specific charitable bequests which are taxable of ten thousand and you have a specific exemption of fifty thousand, so there is a deduction of thirty thousand. When

you deduct that, that would give you the residue and remainder in your estate, wouldn't it?

Mr. Reichmann: Yes.

The Court: What you call net estate. And the tax is levied against the net estate.

271 Mr. Ziffren: That is right.

The Court: Now, isn't that the whole sum and substance of this lawsuit?

Mr. Reichmann: Well, of course, we are contending that when you take and deduct all of the charities, specific and residuary—

The Court: How can you deduct a residuary until you get it?

Mr. Reichmann: Well, if your Honor please, I want to show you, and I hoped that your Honor would give us an opportunity to file a brief here that would clearly and I think conclusively disclose to your Honor that our contention is right in accordance with the very language of the Supreme Court and from cases that will show very clearly the proper construction to put upon Section 807. We have abundant authority that I think are absolutely conclusive.

The Court: Well, now, your figure here of $463,000 on this sheet you handed up rather intrigues me. I would like to see that mathematician work this out and show me where he gets it, if he can do it.

Mr. Reichmann: I can show you, your Honor, how that is obtained.

The Court: Put it on the blackboard so that I can see it.

272 Mr. Reichmann: Well, I can make this calculation right here. It is not necessary to put it on the blackboard.

In answering your Honor's question, I have here all of these figures that represent the expenditures out of this estate.

The Court: Yes.

Mr. Reichmann: And you add them all up and you arrive at $3,775,702.89; I will just mark that down here, $3,775,702.89. That aggregate is $3,775,702.89. That represents all of the expenditures out of that estate,—the administration expenses, the payment of legacies specifically to charities and the payment of legacies to individuals and the balance that is then left out of that total is $463,103.08, that is the residue that is left. That is the way we arrive

at that residue, if your Honor please, an unexpended residue.

The Court: Well, under that theory you would not be owing any tax, would you?

Mr. Ziffren: That is right.

Mr. Horton: That is exactly right.

Mr. Davis: The question in the case, your Honor, is whether in the process of computing the tax you can deduct a tax which is not yet known. That is the proposition
273 that we have.

The Court: What is the difference whether your residuary is a charitable bequest or any other kind of a bequest? You have got to get first the residue, don't you?

Mr. Reichmann: If your Honor please, I hope you will give us leave to file a brief here.

The Court: I am trying to get my mind cleared up on one thing.

Mr. Reichmann: Yes.

The Court: Isn't that a residue?

Mr. Reichmann: It is a residue, if your Honor please. And I will show your Honor that under the decision of the case of Edwards *vs.* Slocum and the Davis case in the same volume, decided by the Supreme Court in an opinion by Chief Justice Taft, as well as other cases, that the question here is not whether there is a residue left or not, or whether the imposition of a tax operates to reduce the residue or not. The question here is, is it paid out of the residue left in the estate after all other specific bequests and devises have been met and the mere fact that if you pay the tax out of the body of the estate that it operates to reduce the residue does not mean that the tax is paid out of the residue and I will show your Honor the
274 Supreme Court is absolutely clear and conclusive on that proposition.

Mr. Horton: And yet we deny that. We deny that the Supreme Court decisions so hold.

Mr. Reichmann: We insist that it does and I think its language is clear beyond any possible question of doubt and that is true also of the Davis case as well as other cases that are identical to all intents and purposes with the case at bar, excepting we come to the construction of 807.

Now, on that question we expect to cite cases to your Honor that I think will demonstrate very clearly and conclusively, if you please, our construction of 807 is the cor-

rect construction and that, therefore, the decision of Edwards *vs.* Slocum applies and entitles us to recover.

The Court: Let me ask the government attorneys this question: Suppose you do not have 807, suppose it is not on the statute books, or was not on the statute books, is this return as made properly computed according to the decision in this Edwards *vs.* Slocum that you refer to?

Mr. Horton: No, we don't think so. We don't think the return as made is properly computed even on that basis.

Mr. Reichmann: You cannot dispute the fact that under the doctrine of Edwards *vs.* Slocum, eliminating, if
275 you please, 807, as your Honor has suggested—

The Court: All right, eliminating that.

Mr. Reichmann: That the tax is 342,000 and some odd dollars. You admitted it this morning. You cannot avoid it. It is just as clear as the nose on your face.

The Court: What is the stipulation on it?

Mr. Davis: The stipulation admits it.

Mr. Horton: The stipulation admits that in here but we do not admit it is correct.

Mr. Reichmann: You cannot get away from it. We arrived, in accordance with the statute, at what the net estate tax was in accordance with that definition of it and all you have to do is take the rates prescribed and that gives you $342,000.

Mr. Horton: May it please the court, will you look at the figures again to refresh your recollection as to what the situation is? We have taken the deductions there and we find a residuary estate of $463,000.

Mr. Reichmann: Just as we do.

Mr. Horton: But they want to take that residuary estate as being the residuary estate when they haven't paid a tax.

Mr. Reichmann: It doesn't make any difference. The question here is is that tax payable out of that residue
276 or is it paid out of the body of the estate, and if it is paid out of the residue, why, of course, we are in it but I say that Section 807 won't permit of any such interpretation. It is paid out of the body of the estate and it amounts to $342,000 when figured on the taxable estate according to the decision of Edwards *vs.* Slocum and then you have left as a residue going to charity $120,000, approximately. I think I can demonstrate that to you without any question of doubt by the citation of authority.

Mr. Horton: The situation is just this: If you give the

$463,000, the residuary estate, to charity, what are you going to pay your tax out of?

Mr. Davis: Mr. Horton, as an answer—

The Court: Well, if it is computed in accordance with the very simple way that I had computed it, under this will, as the court has worked it out, you get $70,000, under the assumption I have made, to be bequeathed to charity.

Mr. Horton: I don't recall the assumption. Take the figures there, if you can apply those figures.

The Court: Well, anyhow, this $463,000, that all goes to charity.

Mr. Horton: No, absolutely not. $342,000 is in the treasury of the United States. It is not going to
277 charity, never will go to charity.

Mr. Reichmann: It shows the residue in the estate.

Mr. Horton: It never will go to charity. It is in the treasury of the United States and it will so remain and yet they say that they want it to go to charity.

Mr. Reichmann: No. What we say, if your Honor please, is there is only $120,000 that goes to charity and that does not affect the equation at all and you have $120,000 by paying it out of the body of the estate and that is the doctrine of the Slocum case. Now, with reference to the language used by the Supreme Court in the Slocum case, I will hand that to your Honor or call it to your Honor's attention when we file the brief here.

The Court: Here under paragraph 9 you have stipulated that you have a net estate of $2,281,000. Now, against that net estate the tax levy is assessed, isn't it?

Mr. Reichmann: No, your Honor.

Mr. Davis: They have already added the tax in that figure, your Honor.

The Court: This formula is like the one I had in mind. In other words, you deduct debts and charges, you charge those deductions, specific exemptions, and the balance will give you the residue of the estate.

Mr. Horton: Yes, $2,283,000 is the net estate.

278 Mr. Davis: No.

Mr. Ziffren: $2,281,000.

Mr. Horton: Yes, $2,281,000, that is the net estate but they say it is $1,821,000.

Mr. Davis: That is the question in this case, your Honor, what is the net taxable estate?

Mr. Reichmann: That is the question.

Mr. Horton: May it please the court, in the return

made by these executors they show a tax of $436,744.66. Now, under the same argument that was the tax you paid.

Mr. Reichmann: Now, I thought you would come back to that. We put Miss Kaufman on the witness stand for the purpose of proving why they put that in in that way and then I was told by counsel there would be no invidious inferences drawn against the fact that we filed that return in that way.

Mr. Horton: That is the fact.

Mr. Reichmann: It is just as I told your Honor. We were led into paying that amount down there and we wanted not to have a deficiency with interest of six per cent running against us and depleting these charities, but we paid the money and then we sue for a refund. That is why we did it.

279 Mr. Ziffren: We are not drawing any conclusions from the fact that you did it this way, except to show the court that you did report a tax of—that you did not report a tax of $342,000, nor did you report a tax of $459,000, but you reported on there a tax of $436,000. That is all we intended to do.

Mr. Davis: What difference does it make?

Mr. Horton: The difference is you haven't got the right tax yet.

Mr. Reichmann: Yes, we have got the right tax.

Mr. Davis: If we were in error we are entitled to file suit for a return.

Mr. Ziffren: Mr. Horton wanted to explain what the return was as filed.

Mr. Davis: You said you were drawing no inferences. Now, that looks to me like an inference.

Mr. Horton: We are just stating the fact.

Mr. Ziffren: After all, the inferences I draw are unimportant. It is the court that draws the inferences.

Mr. Horton: Certainly, $463,000 is not going to charity.

Mr. Reichmann: Oh, you are begging the question all the time.

Mr. Horton: I am not begging.

280 Mr. Reichmann: Yes, you are. You are misconstruing Section 807. That is not the question and I will cite the court what the Supreme Court of the United States said on that subject to show that your argument is utterly fallacious.

Mr. Horton: You are talking about Edwards *vs.* Slocum?

Mr. Reichmann: Yes, and also the Davis case.

Mr. Horton: We have got 807 taken from that.

Mr. Reichmann: Now, you are coming right back to that. You have already said 807 is not subject to our construction and I say it is, and we have got abundant authority to support it and I say that being true the doctrine of Edwards *vs.* Slocum determines this case.

Mr. Horton: And Congress didn't do anything with 807.

The Court: They did just three things, as I understand it. I don't know whether that was any change from what the law was before, but this comes within one of the three things they did by that amendment.

I tell you what I am going to do: It is very apparent that no final decision that this court would make, anyhow, would govern this case. I don't think that from what any of you said so far this 807 governs this case at all. Assuming what Mr. Reichmann says, that the return was computed in accordance with that decision, I will enter a judgment in favor of the plaintiff and let you take it
281 up and make your findings of fact and conclusions of law and go up to the proper court and have them tell us what the law is. I couldn't tell you what the law is.

Mr. Reichmann: Very well, your Honor.

Mr. Ziffren: If the court is going to toss a coin I would rather have it in favor of the government than plaintiffs.

Mr. Reichmann: Now, within what time shall we submit findings of fact?

Mr. Horton: We are coming into the holidays, Mr. Reichmann, and we are very busy and, therefore, we would like to have considerable time to do it.

The Court: You can get up those findings of fact this afternoon, can't you?

Mr. Horton: I don't think so, your Honor.

The Court: I could dictate them in about five minutes.

Mr. Ziffren: I don't know how long it will take Mr. Reichmann to prepare the findings in the first place.

The Court: The only finding I would want to make is that the court finds the facts in accordance with the stipulation.

Mr. Davis: The stipulation provides that you shall incorporate the stipulation of facts in your findings.

Mr. Horton: If that is all, that would be all right.

282 The Court: And you will probably want some time to prepare your conclusions of law.

Mr. Reichmann: Well, then, suppose we come in tomorrow morning or tomorrow afternoon, to suit your Honor's convenience. It is a little late now.

Mr. Davis: There will be some findings based on the testimony of Mr. Graves.

The Court: I won't make any findings based on that at all.

Mr. Reichmann: Can't we submit the findings, then, which will be a very simple one in accordance with your Honor's suggestion, together with the conclusions of law?

Mr. Horton: What conclusion of law? That the plaintiff is entitled to judgment?

The Court: Well, the upper court might criticize that sort of conclusion.

Mr. Horton: That is what you are doing.

The Court: I know that is what I am doing. I am afraid of criticism but that will be the conclusion.

Mr. Ziffren: I think your Honor has nothing to worry about.

The Court: What is it?

Mr. Ziffren: I say, I don't think there is anything to worry about. After all, the conclusion of the court
283 will have to be the plaintiff is entitled to judgment on the basis of the facts in the stipulation.

Mr. Horton: That is all there is to it.

The Court: Well, if you can save me from criticism in the upper court, that suits me, in the judgment order.

Mr. Ziffren: Yes.

Mr. Reichmann: Very well, your Honor.

Mr. Ziffren: That can be done tomorrow morning.

The Court: You will want a ruling on your motion. Better renew your motion in writing.

Mr. Ziffren: Yes.

Mr. Reichmann: Can we come in tomorrow afternoon at two, your Honor?

The Court: Whenever you are ready.

Mr. Reichmann: I think we can get it written by then, your Honor.

The Court: Very well.

(Which were all of the proceedings had in the above entitled cause.)

284 And on, to wit, the 18th day of December, 1940, came the Defendant by his attorney and filed in the Clerk's office of said Court his certain Motion for Judgment in words and figures following, to wit: Filed Dec. 18, 1940.

285 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47259) * *

MOTION FOR JUDGMENT.

The defendant respectfully moves the Court for judgment in favor of the defendant for the reasons that under the pleadings, the evidence and the law—

1. The taxes in question were legally assessed and lawfully collected.
2. The plaintiff has failed to prove a cause of action against the defendant.
3. The record does not contain any substantial evidence to support findings of fact and conclusions of law and judgment in favor of the plaintiff and against the defendant.
4. The defendant is entitled to judgment dismissing plaintiffs' complaint at their cost.

J. Albert Woll,
J. Albert Woll,
United States Attorney,
Attorney for the Defendant.

December 18, 1940.

286 And afterwards, to wit, on the 19th day of December, A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit: Findings of Fact and Conclusions of Law:

Filed Dec. 19, 1940. 287 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47259) * *

THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED IN THE ABOVE ENTITLED CAUSE.

Findings of Fact.

The Court finds the facts in this cause to be the facts set forth in the Stipulation of Facts entered into by and between the plaintiffs and defendant herein, and introduced in evidence by plaintiffs and marked and filed herein as Plaintiffs' Exhibit 1.

Conclusion of Law.

Under the facts found by the Court in this cause, plaintiffs are entitled to recover as shown and prayed
288 in their complaint herein, in the sum of One Hundred Nineteen Thousand Sixty-nine Dollars and forty-three cents ($119,069.43), with interest thereon as provided by law at six per cent (6%) per annum from the various dates of payment made by plaintiffs, as shown by the Stipulation of Facts herein, to December 18, 1940, aggregating the sum of Thirty Thousand Three Hundred Forty-seven Dollars and forty-nine cents ($30,347.49), or a total judgment of One Hundred Forty-nine Thousand Four Hundred Sixteen Dollars and Ninety-two cents ($149,416.92).

Dated, December 19, 1940.

Charles E. Woodward,
Judge.

289 And afterwards, to wit, on the 19th day of December, A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit: Judgment. Entered Dec. 19, 1940.

290 In the District Court of the United States.

* * (Caption—47259) * *

JUDGMENT ORDER.

This cause having come on to be heard on the complaint of plaintiffs, the answer of the defendant thereto, and the reply of the plaintiffs to said answer, and the plaintiffs having appeared by their counsel, and the defendant having appeared by his counsel, and there having been submitted to the Court by said counsel, and introduced by plaintiffs and admitted in evidence, a Stipulation of Facts entered into by and between the parties to this cause, together with the Exhibits attached thereto and made a part thereof; and further evidence having been introduced and admitted on behalf of plaintiffs and of defendant, and the Court having heard and considered said evidence introduced by the respective parties hereto, and having

291 heard the arguments of counsel, finds the facts in this cause to be the facts as set forth in said Stipulation of Facts; and the Court having heretofore filed herein his Findings of Fact and Conclusion of Law, and the defendants having filed herein his written motion for the entry of judgment in his favor, and the Court having found that plaintiffs are entitled to judgment against the defendant, as prayed in their complaint herein:

It Is Therefore Ordered

1. That the motion of the defendant for judgment be and is hereby overruled.

2. That judgment be and is hereby entered in favor of plaintiffs, Mary E. Kaufman and The Northern Trust Company, as Executors under the Last Will and Testament of Henry M. Wolf, deceased, and against Carter H. Harrison as defendant herein, in the sum of One Hundred Nineteen Thousand Sixty-nine Dollars and forty-three cents ($119,069.43), with interest thereon as provided by law at six per cent. (6%) per annum from the various dates of

payment made by plaintiffs, as shown by the Stipulation of Facts herein, to December 18, 1940, aggregating the sum of Thirty Thousand Three Hundred Forty-seven Dollars and forty-nine cents ($30,347.49), or a total judgment of One Hundred Forty-Nine Thousand Four Hundred Sixteen Dollars and ninety-two cents ($149,416.92).

Dated: December 19, 1940.

Charles E. Woodward,
Judge.

Filed Mar. 15, 1941.

292 And on, to wit, the 15th day of March, 1941, came the Defendant by his attorney and filed in the Clerk's office of said Court his certain Notice of Appeal in words and figures following, to wit:

293 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

The Northern Trust Company and Mary E. Kaufman, Executors under the Last Will and Testament of Henry M. Wolf, deceased,
Plaintiffs,
vs.
Carter H. Harrison, Individually and as Collector of Internal Revenue, First Collection District of Illinois,
Defendant.
} No. 47259.

NOTICE OF APPEAL.

Notice is hereby given that the defendant herein, Carter H. Harrison, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit, from the judgment entered in this action on December 19, 1940, and from each and every part of said judgment, as well as from the whole thereof, and upon all questions of law and all questions of fact involved therein.

J. Albert Woll,
J. Albert Woll,
United States Attorney, Attorney for the Defendant.

294 And on, to wit, the 11th day of April, 1941, came the Defendant-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Statement of Points in words and figures following, to wit: Filed Apr. 11, 1941.

295 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47259) * *

STATEMENT OF POINTS.

The above named defendant asserts, and intends to urge, that in entering judgment herein the Court erred in the following respects:

1. In concluding as a matter of law that the assessment and collection of the federal estate tax in question in this case was improper and that plaintiffs are entitled to recover.

2. In concluding as a matter of law that the residuary estate of plaintiffs' decedent, bequeathed to charity, amounted to more than $3,223.51.

3. In failing to conclude as a matter of law that the residuary estate of plaintiffs' decedent, bequeathed to charity, amounted to $3,223.51 and no more.

4. In that the facts found by the Court do not support the judgment.

296 5. In overruling defendant's motion for judgment.

6. In entering judgment in favor of plaintiffs and against defendant.

7. In failing to enter judgment in favor of the defendant, dismissing plaintiffs' complaint.

Carter H. Harrison,
Defendant.

By J. Albert Woll,
United States Attorney.

Assistant United States Attorney,
Attorneys for Defendant.
for Defendant.

P. O. Address:
Federal Building,
Chicago, Illinois.

Chicago, Illinois,
April 11, 1941.

We acknowledge receipt of a copy of the above Statement of Points.

Pam, Hurd & Reichmann,
A. F. Reichmann,
Attorneys for Plaintiffs.

Filed Apr. 11, 1941. 297 And on, to wit, the 11th day of April, 1941, came the Defendant-Appellant by his attorney and filed in the Clerk's office of said Court his certain Designation of Contents of Record on Appeal in words and figures following, to wit:

298 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47259) * *

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

The above named defendant hereby designates the following record proceedings and evidence in the District Court to be contained in the record on appeal:

1. Complaint.
2. Answer.
3. Reply.
4. Stipulation of facts, together with the exhibits attached thereto and made a part thereof.
5. Stenographer's transcript of testimony at the trial, pp. 56-107, inclusive (omitting opening statements), including Plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, and Government Exhibit No. 1.
6. Defendant's motion for judgment.
7. Findings of fact and conclusion of law.
8. Judgment order.

299 9. Notice of appeal.

10. This designation.
11. Statement of Points.

Carter H. Harrison,
Defendant.
By J. Albert Woll,
United States Attorney.

Assistant United States Attorney.
Attorneys for Defendant.
P. O. Address:
Federal Building,
Chicago, Illinois.

Chicago, Illinois,
April 11, 1941.

We acknowledge receipt of a copy of the above Designation.

Pam, Hurd & Reichmann,
A. F. Reichmann,
Attorneys for Plaintiffs.

300 And on, to wit, the 17th day of April, 1941, came the Plaintiffs-Appellees by their attorneys and filed in the Clerk's office of said Court their certain Designation of Additional Contents of Record on Appeal in words and figures following, to wit: Filed Apr. 17, 1941

301 In the District Court of the United States.

* * (Caption—47259) * *

DESIGNATION OF ADDITIONAL CONTENTS OF RECORD ON APPEAL.

The above named plaintiffs hereby designate the following additional record proceedings and evidence in the District Court to be contained in the record on appeal:

1. Stenographer's transcript of testimony at the trial, pages 1 to 55, inclusive, being the opening statements of counsel for the plaintiffs and counsel for the defendant.

2. This designation of additional contents of record on appeal.

The Northern Trust Company and Mary E. Kaufman, Executors under the Last Will and Testament of Henry M. Wolf, deceased,
Plaintiffs.

By Pam, Hurd & Reichmann,
Attorneys for Plaintiffs.
Post Office Address:
231 South La Salle Street
Chicago, Illinois.

Chicago, Illinois
April 17, 1941.

I acknowledge receipt of a copy of the above designation.
J. Albert Woll,
Attorney for Defendant.

302 Northern District of Illinois } ss.
Eastern Division }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designations of Contents of Record on Appeal filed in this Court in the cause entitled The Northern Trust Company and Mary E. Kaufman, Executors under the Last Will and Testament of Henry M. Wolf, Deceased, *vs.* Carter H. Harrison, individually and as Collector of Internal Revenue, etc., No. 47259, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 21st day of April, A. D. 1941.

Hoyt King,
Clerk.

(Seal)

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the first day of October, in the year of our Lord one thousand nine hundred and forty, and of our Independence the one hundred and sixty-fifth.

7661

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED, PLAINTIFFS-APPELLEES

vs.

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

And, to wit: On the twenty-seventh day of February 1942, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 7661.—October Term, 1941, January Session, 1942

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED, PLAINTIFFS-APPELLEES

vs.

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

February 27, 1942

Before SPARKS, MAJOR, and KERNER, Circuit Judges.

SPARKS, Circuit Judge. Appellees sued to recover an alleged overpayment of federal estate taxes in the amount of $119,069.48

with interest. The District Court entered judgment in the sum of $149,416.92, and from that judgment appellant has appealed. The facts were found as stipulated.

Henry M. Wolf, a resident of Chicago, Illinois, died testate on June 4, 1935. By his will he made special bequests to charitable organizations aggregating $1,570,696.74, and bequeathed his residuary estate to certain exempt charitable organizations. He directed that all inheritance, legacy, succession and estate taxes, both state and federal, on the specific bequests and gifts contained in two articles of the will should be paid by his executors out of his general estate, but gave no further direction relative to the payment of federal estate or Illinois inheritance taxes.

The primary question presented is whether under the provisions of Section 303 (a) (3) of the Revenue Act of 1926, as amended by Section 807 of the Revenue Act of 1932, the amount to be deducted from decedent's gross estate on account of his residuary bequest to charity is the actual amount of such bequest, after payment of federal estate taxes, or what would be the amount of such bequest had there been no federal estate taxes.[1]

Appellant contends that under Illinois law the federal estate tax was a paramount charge and expense of administration against the estate, hence is payable in whole or in part out of the residuary estate, within the meaning of the statute and the intent of Congress, as exemplified by Article 44, Treasury Regulations 80 (1934 Edition). It is conceded that the latter is not applicable unless Section 807 is applicable. He further contends that there can be no residuary estate until the federal estate tax has been paid, because such tax is a paramount charge or expense of administration and must be paid out of the assets of the estate. Hence he argues that such payment operates to reduce the residue under the will.

That the federal estate tax is a charge against the estate is not questioned. Whether it is to be paid out of the residue or out of the general of gross estate is to be determined by the

---

[1] Sec. 303, Act of 1926. "For the purpose of the tax the value of the net estate shall be determined—

"(a) In the case of a resident, by deducting from the value of the gross estate—

"(3) The amount of all bequests, legacies, devises, or transfers * * * to or for the use of any corporation organized and operated exclusively for * * * charitable * * * purposes * * *."

Sec. 807. Amendment of Revenue Act of 1932.

"Sections 303 (a) (3) and 303 (b) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows: If the tax imposed by section 301, or any estate, succession, legacy or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes." U. S. C. Title 26, Sec. 412, 461.

terms of the will, or by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax. The will is silent on this subject, and it is conceded that unless the will so directs the federal estate tax can not be paid out of the residue bequeathed to charitable organizations, in the absence of applicable law to the contrary. The law of the jurisdiction under which the estate is settled, which in this case is the law of Illinois, provides that the federal estate tax is a paramount charge and expense of administration which is payable out of the gross estate of the decedent. People v. Pasfield, 284 Ill. 450; People v. Northern Trust Co., 289 Ill. 475; and People v. McCormick, 327 Ill. 547. Hence, under that jurisdiction, such tax is not payable in whole or in part out of the residuary bequests to charity.

It is conceded that prior to the enactment of Amendatory Section 807 of the Act of 1932, there was no federal enactment which authorized the deduction of federal estate tax from residuary bequest to charities in fixing the net taxable estate. Edwards v. Slocum, 264 U. S. 61. Appellant concedes that the facts in that case are substantially identical with those here, except as to the amounts involved, and were it not for Section 807 the decision of the Supreme Court in Edwards v. Slocum, supra, would be controlling here.

However, appellant contends that Section 807 is a limitation upon the amount otherwise deductible on account of charitable bequests. This thesis is based on the assumption that the language of the section is ambiguous when applied to a residuary bequest to charity, although appellant in effect admits that there is no ambiguity when applied to a specific bequest to charity. We think the language is clear and unambiguous, in either event. Section 807 imposes no tax. It merely declares that in a certain event the amount of the deductible bequest is the face amount of such bequest less the amount of such tax. The contingent event is that such tax or any part of it is made payable, in part or as a whole, out of such bequest, by any of three means, that is to say—by the will, or by the State law of administrative jurisdiction, or by the law of the jurisdiction imposing the particular tax.

Appellant seeks to parry the force of the clear language of the section by resort to legislative history in order to arrive at what he claims to be the true policy and intent of Congress. This can not be done unless there is an ambiguity of language in the section sought to be construed. We think there is no such ambiguity present, and we think this conclusion is greatly supported by the fact that Congress has had knowledge of the

decision in Edwards v. Slocum since its pronouncement in 1924, and since that time has made no effort, except by the enactment of this section, to change the law to accord with appellant's views, although it could have done so with very few words of unquestionable meaning. Furthermore, we think a literal reading of the Section does not produce an absurd result, as suggested by appellant. See Commissioner v. Ames, 88 F. 2d 338. Moreover, counsel for appellant, at the trial of this case in the District Court, said: "The Government does not at all contend that this statute (Sec. 807) is ambiguous. We simply want it clear that if the court finds it ambiguous the court may examine anything it desires."

In view of our conclusion it was conceded that it was unnecessary for this court to decide other questions presented. We think there was no error in the District Court's ruling.

Judgment affirmed.

A true Copy:

Teste:

_____,

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to wit: On the twenty-seventh day of February 1942, the following further proceedings were had and entered of record, to wit:

Friday, February 27, 1942

Court met pursuant to adjournment.

Before: Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. OTTO KERNER, Circuit Judge.

7661

THE NORTHERN TRUST COMPANY, ET AL., EXECUTORS, ETC., PLAINTIFFS-APPELLEES

vs.

CARTER H. HARRISON, ETC., DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

United States Circuit Court of Appeals for the Seventh Circuit

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages contain a true copy of the opinion of the Court filed February 27, 1942, and the judgment entered thereon February 27, 1942, in the following entitled cause: Cause No. 7661; The Northern Trust Company and Mary E. Kaufman, Executors, etc., plaintiffs-appellees, vs. Carter H. Harrison, etc., as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-eighth day of April, A. D. 1942.

KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1942

Supreme Court of the United States

Order allowing certiorari

Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office - Supreme Court, U. S.
FILED
MAY 27 1942
CHARLES ELMORE CROPLEY

No. ~~1264~~ 903

In the Supreme Court of the United States

OCTOBER TERM, 1941

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS, PETITIONER

v.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. —

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS, PETITIONER

v.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of Carter H. Harrison, individually and as Collector of Internal Revenue for the First Collection District of Illinois, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit, entered in the above case on February 27, 1942, affirming the decision of the District Court of the United States for the Northern District of Illinois.

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 217–220) is reported in 125 F. (2d) 893.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 27, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the provisions of Section 303 (a) (3) of the Revenue Act of 1926 as amended by Section 807 of the Revenue Act of 1932, the amount to be deducted from decedent's gross estate on account of decedent's bequest of his residuary estate to charity is the actual amount of such bequest, after payment of federal estate taxes, or what would have been the amount if there had been no federal estate taxes.

STATUTES AND REGULATIONS INVOLVED

Section 807 of the Revenue Act of 1932, c. 209, 47 Stat. 169, provides as follows:

> Sections 303 (a) (3) and 303 (b) (3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:

"If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

The other statutory provisions and the regulations involved appear in Appendix A, *infra*, pp. 10–12.

STATEMENT

Respondents as executors of the last will and testament of Henry M. Wolf brought this suit to recover an alleged overpayment of federal estate taxes. The District Court entered judgment for respondents in the amount of $149,416.92 (R. 211–212) and the Circuit Court of Appeals affirmed (R. 220–221).

The facts were stipulated (R. 71–81) and may be summarized as follows:

Testator, a resident of Chicago, Illinois, died on June 4, 1935, leaving a gross estate of $4,238,805.97. His will contained a number of specific bequests to individuals as well as specific bequests to charities aggregating $1,570,696.74, and a bequest of his residuary estate to four named charitable or-

ganizations. Except for a direction that all inheritance, legacy, succession, and estate taxes on certain of the bequests to individuals should be paid out of the general estate, the will contained no provision as to the payment of federal or state taxes. (R. 72–73, 8–22.)

Upon final audit of the estate tax return filed by respondents, the Commissioner of Internal Revenue found a total tax of $459,879.57. In computing the net estate for tax the Commissioner allowed a deduction in the full amount of the specific bequests to charities, and a deduction of $3,223.51 on account of the bequest of the residuary estate to charities. The latter amount represents the amount of the residuary estate actually receivable by the residuary charitable legatees after payment of the federal estate tax from the general estate as computed by the Commissioner. (R. 74–78.)

Respondents paid the tax assessed by the Commissioner under protest and thereafter filed a claim for refund in the amount of $119,069.43 with interest. This amount is the difference between the tax assessed by the Commissioner plus interest thereon paid by respondents and $342,744.60, which is the tax computed according to respondents' theory that the amount properly deductible on account of the bequest of the residuary estate to charity is the full amount which would have been receivable under the bequest in the absence of any federal estate tax. The claim for refund was rejected by

the Commissioner and this suit followed. (R. 78–91.)

By stipulation of the parties it is conceded that the suit should be dismissed with costs to respondents if the Commissioner was correct in construing Section 807 of the Revenue Act of 1932 to limit the deduction on account of the bequest of the residuary estate to charity to the amount actually receivable under the bequest after payment of the federal estate tax. It is also conceded that if Section 807 is inapplicable, as respondents contend, respondents are entitled to recover the amount claimed by them ($119,069.43) with interest. (R. 79–80.) Apart from the question of statutory construction, there is, therefore, no question as to the accuracy of the respective computations of tax made by the Commissioner and by respondents.

REASON FOR GRANTING THE WRIT

The decedent bequeathed the residue of his estate for charitable purposes, and the question presented relates to the computation of the charitable deduction on account of that bequest. After subtracting all other bequests from the decedent's assets there remained a residue of over $400,000, and it is that residue which the executors seek to deduct in full. However, the payment of estate taxes with respect to the various specific bequests made by the decedent absorbed the great bulk of that residue, with the consequence that only a relatively small amount was actually available for distribution to the chari-

table donees. It is the Government's position that only the net amount actually distributable to the residuary legatees may be deducted.

The situation is substantially identical with that presented in *Edwards* v. *Slocum*, 264 U. S. 61, in which the issue was decided against the Government under the Revenue Act of 1918. Thereafter, by Section 807 of the Revenue Act of 1932, Congress undertook to overcome the result of *Edwards* v. *Slocum*, and specifically provided:[1]

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[1] The report of the House Ways and Means Committee accompanying the bill which became the Revenue Act of 1932 makes it clear that these provisions were intended to reverse the rule of *Edwards* v. *Slocum*. H. Rep. No. 708, 72d. Cong., 1st Sess., pp. 49–50. See Appendix B, *infra*, pp. 13–14.

Moreover, certain earlier legislative history shows that these provisions were intended to vitiate the effect of *Edwards* v. *Slocum*. That decision was rendered on February 18, 1924, and was called to the attention of the Senate Committee which was then considering the Revenue Bill of 1924; and when that bill was reported out it contained a sentence substantially identical with the provisions involved herein. See H. R. 6715 (Calendar No. 388), 68th Cong., 1st Sess., p. 149. The report of the Senate Committee (S. Rep. No. 398, 68th Cong., 1st Sess., p. 35) as well as the Conference Report (H. Rep. No. 844, 68th Cong., 1st Sess., pp. 25–26) made it clear that the new provisions were intended to permit as a deduction only the amount actually distributable to the charitable donees. See Appendix B, *infra*, p. 15. Although those provisions were enacted as part of Section 303 (a) of the Revenue Act of 1924, they were subsequently repealed as of June 2, 1924, by Section 323 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9. They were thereafter restored to the estate tax law by Section 807 of the Revenue Act of 1932, here involved.

SEC. 807. DEDUCTION OF BEQUESTS, ETC. TO CHARITY.

Sections 303 (a) (3) and 303 (b) (3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:

"If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

It is not disputed that by the broad sweep of these provisions Congress intended to do away with the result reached in *Edwards* v. *Slocum*, whereby the charitable deduction allowed was considerably in excess of the actual amount payable to the charitable donee.[2] The decision of the court

[2] Indeed, under that decision it was possible to obtain a charitable deduction even though *no* amount was distributable to the charitable donee. For example, a decedent with assets of $11,000,000 could make specific bequests of $10,000,000 to noncharitable legatees, and then provide that the residue go to specified charities. But the residue in that situation would be completely absorbed by the estate tax, so that there would remain no residue for distribution. Yet, under *Edwards* v. *Slocum*, there would be a deduction of

below, however, defeats the very object which these provisions were designed to achieve. It rests upon refinements wholly contrary to the congressional purpose. The court below holds that under Illinois law the estate tax was a "charge" upon the entire estate and not merely the residue, and that therefore it was not payable "out of" the residue within the meaning of the Illinois law. But the plain fact is that regardless of whether it may be a "charge" against the entire estate in the sense of a lien or otherwise, it was nevertheless properly paid pursuant to Illinois law in such manner as to reduce the amount distributable to the residuary donees, with the consequence that the residuary bequests bore the economic burden; it was therefore paid "out of" the residue within the meaning of Section 807.

The decision is of considerable fiscal importance to the Government. The Treasury advises us that although it has not been able to make a complete survey of all pending estate tax cases, it in fact knows of a number of pending cases raising the identical issue involving over $22,000,000 in taxes, and it estimates that a complete survey would dis-

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$1,000,000. The decision thus provided a facile means of estate tax avoidance by permitting the decedent to carve up the estate in such manner as to leave a "residue" substantially equal to the anticipated tax and then make the meaningless bequest of the "residue" to charity.

close about 2,000 cases with an aggregate estate tax liability of approximately $50,000,000 which would turn upon the issue herein.

In view of the importance of the question, it is respectfully submitted that the petition should be granted.

CHARLES FAHY,
Solicitor General.

MAY 1942

APPENDIX A

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

* * * * *

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; * * *

Treasury Regulations 80 (1934 Ed.):

ART. 44. *Transfers for public, charitable, religious, etc., uses.*—Deduction may be taken of the value of all property transferred by will or by the decedent in his lifetime not to exceed the value of the transferred property required to be included in the gross estate if in either case the property was transferred * * * (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; * * *

* * * * *

If the decedent died after 5 p. m., eastern standard time, June 6, 1932, and under the terms of the will, or the law of the jurisdiction wherein the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax (including the additional estate tax imposed by the Revenue Act of 1932), or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible under section 303 (a) (3), the sum deductible is the amount of such bequest, legacy, or devise so reduced. Thus, if $50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance of $5,000, the amount deductible is $45,000; or if a life estate is bequeathed to

an individual with remainder over to a charitable corporation, and by the local law the legacy tax upon the life estate is taken out of the corpus with the result that the charitable corporation will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present worth, as of the date of the testator's death, of the remainder of the fund so reduced; or if the testator bequeaths his residuary estate, or a portion thereof, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies in respect to which they were laid, shall be payable out of such residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will; or if a residuary estate, or a portion thereof, be bequeathed to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. * * *

APPENDIX B

H. Rep. No. 708, 72d Cong., 1st Sess., pp. 49–50 (1939–1 Cum. Bull. (Part 2) 457, 492):

SECTION 807. DEDUCTION OF BEQUESTS, ETC., TO CHARITY.

The purpose of this amendment is to limit the deduction for charitable bequests, etc., to the amount which the decedent has in fact and in law devised or bequeathed to charity. Under existing law no consideration can be given to any estate, succession, legacy, or inheritance taxes imposed with respect to a decedent's estate even though by the terms of his will or the local law they actually reduce the amount of such bequest or devise. It is evident that where the decedent gives his residuary estate to charity, but by his will directs that such taxes shall be paid therefrom, all that he gives to charity and all that charity is entitled to receive is the residuary estate reduced by the amount of the taxes charged against it; the residuary estate being what is left after the subtraction of such taxes and other charges and prior bequests. This is equally true where, in the absence of such a direction in the will, such taxes under the local law are payable out of the residuary estate.

This amendment restores the sentence appearing in sections 303 (a) (3) and 303 (b) (3) of the revenue act of 1924, which was retroactively repealed by section 323 of the revenue act of 1926.

The Supreme Court on February 18, 1924, in the case of *Edwards* v. *Slocum* (264 U. S. 61), held that, as a matter of construction, a residuary gift to charity was not to be reduced by the Federal estate tax which was imposed on so much of the estate as the testatrix had bequeathed to individuals. Under the State law the estate tax was payable generally out of the estate and so fell upon and reduced the residuary estate given to charity. As a legislative reversal of the decision in that case, the sentence referred to was incorporated in the revenue act of 1924 and covered Federal estate taxes as well as State inheritance taxes where, either by the terms of the will or by the local law, any such tax operated to reduce the amount given to and received by charity. In view of the retroactive repeal of the sentence, the Treasury took the position that the legislative intent thereby indicated necessarily extended both to the Federal estate tax and to State inheritance taxes.

Under the existing law, most absurd results are reached. Thus, if a testator gives his residuary estate to charity and directs that the Federal estate tax and the State inheritance taxes shall be paid out of such estate, the result may be that nothing is left for charity. In such case, notwithstanding nothing is given to charity and charity receives nothing, still there must be deducted from the gross estate a wholly fictitious sum, namely, what he would have given to charity had he not directed otherwise. The result in all other cases to which the amendment will apply varies from the foregoing example in degree only.

S. Rep. No. 398, 68th Cong., 1st Sess., p. 35 (1939–1 Cum. Bull. (Part 2) 266, 290):

> * * * A sentence has been inserted in paragraph (3) [of subdivision (a)] and in paragraph (3) of subdivision (b) to make it clear that the amount deductible under these paragraphs on account of bequests, legacies, or devises for the specified benevolent purposes shall be the net amount distributable for such purposes, after estate, legacy, or inheritance taxes imposed in respect thereof have been deducted therefrom. It is evident that if a testator leaves a residuary estate of $1,000,000 to a charity, but the estate taxes payable out of the residue reduce the amount actually distributed to the charity to $950,000, only the latter amount should be deductible, in computing the amount of the net state, as a bequest to charity. This sentence so provides.

H. Conference Rep. No. 844, 68th Cong., 1st Sess., pp. 25–26, (1939–1 Cum. Bull. (Part 2) 300, 308):

> * * * An additional sentence has been added to these paragraphs to provide that the amount deductible under such paragraphs on account of bequests, legacies, devises, or transfers for the specified benevolent purposes shall be the net amount distributable for such purposes after estate, legacy, or inheritance taxes imposed in respect thereof have been deducted therefrom.

U. S. GOVERNMENT PRINTING OFFICE: 1948

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No. 103

In the Supreme Court of the United States

OCTOBER TERM, 1942

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS, PETITIONER

v.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 103

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS, PETITIONER

v.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINION BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 217–220) is reported in 125 F. (2d) 893.

JURISDICTION

The judgment of the Circuit Court of Appeals was rendered on February 27, 1942 (R. 220–221). The petition for a writ of certiorari was filed or

May 27, 1942, and was granted on October 12, 1942. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the provisions of Section 303 (a) (3) of the Revenue Act of 1926 as amended by Section 807 of the Revenue Act of 1932, the amount to be deducted from decedent's gross estate on account of decedent's bequest of his residuary estate to charity is the actual amount of such bequest, after payment of federal estate taxes, or what would have been the amount if there had been no federal estate taxes.

STATUTES AND REGULATIONS INVOLVED

Section 807 of the Revenue Act of 1932, c. 209, 47 Stat. 169, provides as follows:

> Sections 303 (a) (3) and 303 (b) (3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:
>
> "If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount

deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

The other statutory provisions and the regulations involved appear in Appendix A, *infra*, pp. 18–20.

STATEMENT

This is an action brought by the respondents as executors under the will of Henry M. Wolf to recover an alleged overpayment of federal estate tax. The facts, as stipulated (R. 71–81) and as disclosed by the pleadings (R. 2–44), may be summarized as follows:

Testator, a resident of Chicago, Illinois, died on June 4, 1935, leaving a gross estate of $4,238,805.97 (R. 71–73). After subtracting (1) funeral and administration expenses, etc., (2) specific bequests to individuals, and (3) specific bequests to charities (the latter aggregating $1,570,696.74), there remained a residue of $463,103.08, before federal death taxes were taken out (R. 4). The testator bequeathed the residuary estate to four named charitable organizations (R. 72–73). Except for a direction that all inheritance, legacy, succession, and estate taxes on certain of the bequests to individuals should be paid out of the general estate, the will contained no provision as to the payment of federal or state taxes (R. 73).

The respondents contend that in computing the federal estate tax they are entitled to deduct,

inter alia, the entire residue of $463,103.08 as charitable bequests. The Government, on the other hand, contends that since the death taxes reduce the amount of the residue available for distribution to the four named charities, there may be deducted as charitable bequests only that portion of the $463,103.08 which may actually be distributed to the charitable donees. And since the Commissioner determined that total net taxes amounted to $459,879.57, which would be paid out of the residuary estate, there remained only $3,223.51 which would pass under the residuary bequests (R. 74–78). Under the Commissioner's computation, therefore, only $3,223.51 was allowed as a charitable deduction with respect to the residue[1] (R. 87).

Respondents paid the tax assessed by the Commissioner under protest and thereafter filed a claim for refund in the amount of $119,069.43 with interest. This amount is the difference between the tax assessed by the Commissioner plus interest thereon paid by respondents and $342,744.60, which is the tax computed according to respondents' theory that the amount properly deductible on account of the bequest of the residuary estate to charity is the full amount which would

[1] The specific charitable bequests, aggregating $1,570,696.74, were, of course, allowed as deductions in full, and after adding the $3,223.51 deduction with respect to the residuary estate, the Commissioner allowed a total charitable deduction in the amount of $1,573,920.25 (R. 87).

have been receivable under the bequest in the absence of any federal estate tax. The claim for refund was rejected by the Commissioner and this suit followed. (R. 78–91.) The District Court entered judgment for respondents (R. 211–212) and the Circuit Court of Appeals affirmed (R. 220–221).

By stipulation of the parties it is conceded that the suit should be dismissed with costs to respondents if the Commissioner was correct in construing Section 807 of the Revenue Act of 1932 to limit the deduction on account of the bequest of the residuary estate to charity to the amount actually receivable under the bequest after payment of the federal estate tax. It is also conceded that if Section 807 is inapplicable, as respondents contend, respondents are entitled to recover the amount claimed by them ($119,069.43) with interest. (R. 79–80.) Apart from the question of statutory construction, there is, therefore, no question as to the accuracy of the respective computations of tax made by the Commissioner and by respondents.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in holding that the deduction allowable in the instant case by reason of the bequest of the decedent's residuary estate to charities under Section 303 (a) of the Revenue Act of 1926, as amended by

Section 807 of the Revenue Act of 1932, is in the amount which the charities would have received had it not been necessary to pay the death taxes involved.

2. The Circuit Court of Appeals erred in not holding that the deduction allowable in the instant case by reason of the bequest of the decedent's residuary estate to charities under Section 303 (a) (3) of the Revenue Act of 1926, as amended by Section 807 of the Revenue Act of 1932, was only in the amount actually distributable to the charities after payment of the federal estate taxes.

3. The Circuit Court of Appeals erred in affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

Prior to the payment of the federal estate tax there was a residuary estate of $463,103.08. The executors contend that since the decedent made a charitable bequest of the residue, the full $463,103.08 is allowable as a charitable deduction. It is our position, on the other hand, that since the payment of the tax reduces the amount distributable out of the residue to the charitable beneficiaries, the tax itself must be computed in such manner that the amount allowable as a charitable deduction with respect to the residue is the amount actually left for distribution to the charitable beneficiaries.

The situation here presented is identical with that in *Edwards* v. *Slocum*, 264 U. S. 61, where the issue was decided against the Government. However, Congress thereafter changed the statute, and the provisions of Section 807 of the Revenue Act of 1932, here involved, were expressly recognized by the House Ways and Means Committee as a "legislative reversal" of that decision.

Section 807 provides that where the estate tax is, either under the will or under local law, "payable * * * out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes." The court below erroneously refused to give effect to these provisions. It fastened upon the words "payable * * * out of," and ruled that since under Illinois law, the estate tax was a charge against the entire estate, it could not be payable "out of" the residuary charitable bequest. We may concede *arguendo* that the estate tax is a charge against the entire estate under Illinois law, in the sense that collection may be had in the first instance from any assets left by the decedent. But the effect of such collection, under Illinois law, nevertheless reduces the amount payable to the charitable beneficiaries out of the residue. It was in this sense that Congress employed the words "payable * * * out of," and any doubt

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on this issue is unambiguously resolved by the legislative history of these provisions. Congress undertook to reverse the rule of *Edwards* v. *Slocum*, but the court below has refused to give effect to the Congressional purpose.

ARGUMENT

THE AMOUNT TO BE DEDUCTED ON ACCOUNT OF THE CHARITABLE BEQUEST OF THE RESIDUARY ESTATE IS THE NET AMOUNT ACTUALLY DISTRIBUTABLE TO THE CHARITABLE LEGATEES

1. The decedent bequeathed the residue of his estate to certain named charities and the question presented relates to the computation of the charitable deduction on account of that bequest. Prior to the payment of federal estate taxes the residuary estate amounted to $463,103.08 and it is that amount which the respondents seek to deduct in full. However, the payment of the estate taxes with respect to the entire estate absorbed the great bulk of that residue. In consequence only a relatively small amount was actually available for distribution to the charities. It is the Government's position that the deduction may be taken only for the net amount actually distributable to the charities.

The situation is substantially identical with that presented in *Edwards* v. *Slocum*, 264 U. S. 61, which arose under the Revenue Act of 1918. Section 403 (a) (3) of that Act was the first to grant the deduction for gifts to charities. In the

Slocum case, as here, there was a charitable bequest of the residuary estate. The Commissioner regarded the deductible residuary estate as that which was left after all the charges, including the federal estate tax, had been taken out of the estate. It was held, however, that the amount of the deduction attributable to the charitable gift of the residue was to be computed without regard to the fact that the actual amount which the charities would receive would be decreased by the federal estate tax.

Section 807 of the Revenue Act of 1932 was thereafter enacted for the recognized purpose of doing away with the result reached in *Edwards* v. *Slocum*.[2] The report of the House committee accompanying the 1932 revenue bill made it clear that these provisions were intended to constitute "a legislative reversal of the decision in that case." H. Rep. No. 708, 72d Cong., 1st Sess., pp. 49–50, Appendix B, *infra*, pp. 21–22.[3]

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[2] The provisions of Section 807 have since been incorporated in Section 812 (d) of the Internal Revenue Code (53 Stat. 1).

[3] The decision in *Edwards* v. *Slocum* was rendered on February 18, 1924; it was called to the attention of the Senate Committee which was then considering the Revenue Bill of 1924, and when that bill was reported out it contained a sentence substantially identical with the provisions involved herein. See H. R. 6715 (Calendar No. 388), 68th Cong., 1st Sess., p. 149. The report of the Senate Committee (S. Rep. No. 398, 68th Cong., 1st Sess., p. 35) as well as the Conference Report (H. Conference Rep. No. 844, 68th Cong., 1st Sess., pp. 25–26) unambiguously disclosed that the new pro-

The same committee report expressly recognized the vice of *Edwards* v. *Slocum*, saying (see Appendix B, *infra*, p. 22):

> Under the existing law, most absurd results are reached. Thus, if a testator gives his residuary estate to charity and directs that the Federal estate tax and the State inheritance taxes shall be paid out of such estate, the result may be that nothing is left for charity. In such case, notwithstanding nothing is given to charity and charity receives nothing, still there must be deducted from the gross estate a wholly fictitious sum, namely, what he would have given to charity had he not directed otherwise. The result in all other cases to which the amendment will apply varies from the foregoing example in degree only.

Thus, under the prior law as interpreted by *Edwards* v. *Slocum*, the testator was provided with a facile means of estate tax avoidance. He could carve up his estate in such manner as to leave a residue roughly equal to the anticipated tax and then make the meaningless bequest of the "residue" to charity. The charity, of course, would

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visions were intended to permit as a deduction only the amount actually distributable to the charitable donees. See Appendix B, *infra*, p. 23. Although those provisions were enacted as part of Section 303 (a) of the Revenue Act of 1924, they were subsequently repealed as of June 2, 1924, by Section 323 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9. They were thereafter restored to the estate tax law by Section 807 of the Revenue Act of 1932, here involved.

receive nothing, but the estate would obtain the windfall of a substantial charitable deduction. Section 807 was enacted to prevent such avoidance in the future.

2. The court below, however, refused to give effect to the known purpose of Section 807. It fastened upon the words "payable * * * out of" in Section 807, and determined that since the federal death tax was a charge against the decedent's entire estate under Illinois law (*People* v. *Pasfield*, 284 Ill. 450; *People* v. *Northern Trust Co.*, 289 Ill. 475; *People* v. *McCormick*, 327 Ill. 547),[4] the tax was not payable "out of" the residuary charitable bequests, with the result that Section 807 is inapplicable here. Accordingly, it ruled, following *Edwards* v. *Slocum*, that the full amount of the gross residue was deductible, rather than the net amount actually distributable to the charitable legatees. We respectfully submit that the court misconstrued Section 807.

It may be conceded, *arguendo*, that the federal

[4] Although the opinions in those cases refer to the federal tax as a charge against the entire estate, the question actually decided in each of them, so far as is relevant here, was quite narrow. The court simply held that in computing the state inheritance taxes, the amount of the federal taxes must be subtracted from the decedent's assets in order to determine the net amount of the various legacies and bequests subject to the state tax. Thus, even under Illinois law, the bequests and legacies are treated as the net amounts receivable after payment of federal taxes. Therefore, far from casting doubt upon our position here, those cases furnish strong support for it.

estate tax is a charge against the entire estate under Illinois law. Indeed, as we pointed out in our brief in *Riggs* v. *Del Drago*, No. 30, present Term, the federal tax is theoretically always carved out of the estate as a whole prior to distribution, and the estate as thus diminished is then divided among the survivors. But the payment of the tax obviously reduces the amounts that would otherwise be distributed to one or more of the various survivors, and it is in this sense that Section 807 must be construed. Congress simply meant that where the burden of the death tax would, as a result of state law, diminish the amount otherwise receivable by a charitable legatee, a deduction would be allowed only for the reduced amount. It was in this sense that Congress used the words, "payable * * * out of." The death tax is payable "out of" a charitable bequest within the meaning of Section 807, if as a result of state law that bequest is reduced by the amount of the tax. And it has not been disputed in this case that the weight of the tax is felt by the residuary bequests, i. e., that the residuary bequests are diminished by the amount of the tax.[5]

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[5] Indeed, the rule in most states is that in the absence of a contrary direction by the testator the weight of the tax falls upon the residuary legatees or devisees. *Turner* v. *Cole*, 118 N. J. Eq. 497; *Ericson* v. *Childs*, 124 Conn. 66; *Estate of Brown* v. *Hoge*, 198 Iowa 373; *Thompson* v. *Union & Merc. Trust Co.*, 164 Ark. 411; *Woodruff* v. *Holmes*, 328 Mo. 143; *Plunkett* v. *Old Colony Trust Co.*, 233 Mass. 471; *Bemis* v. *Converse*, 246 Mass. 131; *Pratt* v. *Dean*, 246 Mass. 300; *Hepburn* v. *Winthrop*, 83 F. (2d) 566 (App. D. C.); *Amos-*

If the view of the court below were to prevail, Section 807 would never have any application. For, the federal estate tax is always carved out of the estate as a whole in the first instance; and in the technical sense in which the court below read the statute it is never paid "out of" any particular bequest. Congress must have intended to refer to bequests which, as a result of state law, feel the burden of the tax. To be sure, Congress has made Section 807 turn upon state law; but the problem is to ascertain where the state law fixes the ultimate burden of the tax, not what label it places upon the result.[8] *Morgan* v. *Commissioner*, 309 U. S. 78, 80–81. And, in the instant situation, it is not disputed that Illinois law fixes the ultimate burden upon the residuary legatees; it is therefore immaterial that the Illinois decisions describe the result in terms of a different formula.

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keag &c. Co. v. *Dartmouth College*, 89 N. H. 471; *Y. M. C. A.* v. *Davis*, 106 Ohio 366, affirmed, 264 U. S. 47. A different rule probably prevails in Florida (*Henderson, et vir.* v. *Usher*, 125 Fla. 709), and perhaps in Kentucky (compare *Lakes* v. *Lakes' Executors*, 267 Ky. 684, with *Martin* v. *Martin's Adm'r.*, 283 Ky. 513, and *Hampton's Admr.* v. *Hampton*, 188 Ky. 199). A different rule has likewise been adopted by statute in Pennsylvania (Act of July 2, 1937, P. L. 2762) and in New York. The constitutionality of the New York statute is before the Court in *Riggs* v. *Del Drago*, No. 30, present Term.

[8] Indeed, the report of the House committee with respect to Section 807 specifically described the situation in *Edwards* v. *Slocum* as follows: "Under the State law the estate tax was payable generally out of the estate and so fell upon and reduced the residuary estate given to charity." (See

Our position is further confirmed by Section 826 (b) of the Internal Revenue Code (53 Stat. 1), which is involved in the *Del Drago* case and which provides as follows:

> (b) REIMBURSEMENT OUT OF ESTATE.—If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this subchapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

It will be observed that Congress contemplated that the tax would generally be taken out of the estate as a whole, but recognized that the burden would be felt by the various beneficiaries. Accordingly, it may reasonably be assumed that in enacting Section 807 Congress was legislating in

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Appendix B, *infra*, p. 22.) But this is precisely the situation here, even under respondents' interpretation of the Illinois decisions; therefore, since Section 807 was intended as a "legislative reversal" of *Edwards* v. *Slocum*, it is plain that Section 807 is applicable here.

the light of the foregoing provisions, and intended to refer merely to those bequests that would be diminished by the payment of the tax.

3. The court below refused to look into the legislative history of Section 807 on the principal ground that the provisions are so clear as to foreclose the inquiry. (R. 219.) However, we submit that the legislative history, discussed above, is illuminating and should not have been so lightly put aside. See *United States* v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 543–544:

> When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination." The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. Emphasis should be

laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown."

Cf. *United States* v. *Dickerson*, 310 U. S. 554, 562.

4. In the brief below the respondents made two additional contentions which they may renew here, but which may be briefly dismissed.

(a) The respondents have argued that the Government's interpretation of Section 807 results in the imposition of a "tax upon a tax," which was said to be unconstitutional. But whatever may be said of the accuracy of respondents' characterization of Section 807, it is clear that this case simply involves a charitable deduction which Congress could have denied altogether. *Helvering* v. *Ind. Life Ins. Co.*, 292 U. S. 371, 381; *Helvering* v. *Insurance Co.*, 294 U. S. 686, 689; *Helvering* v. *Winmill*, 305 U. S. 79, 84. Cf. *Taft* v. *Commissioner*, 304 U. S. 351, 358–359. Congress is therefore certainly not without constitutional power to limit that deduction.

(b) The respondents have also raised the objection that the tax is computed by resort to an algebraic formula. Although it is true that an

algebraic formula may conveniently be employed,[7] the computations may also be made by the use of ordinary arithmetic methods.[8] Moreover, Section 807 was enacted by Congress in the face of the statement in the *Slocum* opinion with respect to algebraic computations; and, in any event, this Court has recently approved a method of computation which involved the use of a quadratic equation. *United States* v. *New York*, 315 U. S. 510, 518–520.

CONCLUSION

The decision below is erroneous and should be reversed.

Respectfully submitted.

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NOVEMBER 1942.

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[7] The algebraic problem may be stated as follows: Let x = amount of the estate tax. Find x so that the deduction on account of the charitable bequest of the residue in this case would be equal to $463,103.08 minus x.

[8] There is no dispute as to the correctness of the Commissioner's computation, for it was stipulated that the Government was entitled to judgment dismissing the executors' suit if the Commissioner's interpretation of Section 807 is correct (R. 79–80).

APPENDIX A

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

* * * * *

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; * * *.

Treasury Regulations 80 (1934 Ed.):

ART. 44. *Transfers for public, charitable, religious, etc., uses.*—Deduction may be taken of the value of all property transferred by will or by the decedent in his lifetime not to exceed the value of the transferred property required to be included in the gross estate if in either case the property was transferred * * * (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; * * *.

* * * * *

If the decedent died after 5 p. m., eastern standard time, June 6, 1932, and under the terms of the will, or the law of the jurisdiction wherein the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax (including the additional estate tax imposed by the Revenue Act of 1932), or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible under section 303 (a) (3), the sum deductible is the amount of such bequest, legacy, or devise so reduced. Thus, if $50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of $5,000, the amount deduct-

ible is $45,000; or if a life estate is bequeathed to an individual with remainder over to a charitable corporation, and by the local law the legacy tax upon the life estate is taken out of the corpus with the result that the charitable corporation will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present worth, as of the date of the testator's death, of the remainder of the fund so reduced; or if the testator bequeaths his residuary estate, or a portion thereof, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies in respect to which they were laid, shall be payable out of such residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will; or if a residuary estate, or a portion thereof, be bequeathed to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. Should the executor desire a verification of his own computation before filing the return on Form 706, or should he wish the Bureau to make the computation for him in the first instance, he should accompany his request with a statement of the material facts.

APPENDIX B

H. Rep. No. 708, 72d Cong., 1st Sess., pp. 49–50 (1939–1 Cum. Bull. (Part 2) 457, 492):

SECTION 807. DEDUCTION OF BEQUESTS, ETC., TO CHARITY.

The purpose of this amendment is to limit the deduction for charitable bequests, etc., to the amount which the decedent has in fact and in law devised or bequeathed to charity. Under existing law no consideration can be given to any estate, succession, legacy, or inheritance taxes imposed with respect to a decedent's estate even though by the terms of his will or the local law they actually reduce the amount of such bequest or devise. It is evident that where the decedent gives his residuary estate to charity, but by his will directs that such taxes shall be paid therefrom, all that he gives to charity and all that charity is entitled to receive is the residuary estate reduced by the amount of the taxes charged against it; the residuary estate being what is left after the subtraction of such taxes and other charges and prior bequests. This is equally true where, in the absence of such a direction in the will, such taxes under the local law are payable out of the residuary estate.

This amendment restores the sentence appearing in sections 303 (a) (3) and 303 (b) (3) of the Revenue Act of 1924, which was retroactively repealed by section 323 of the Revenue Act of 1926.

The Supreme Court on February 18, 1924, in the case of *Edwards* v. *Slocum* (264 U. S., 61), held that, as a matter of construction, a residuary gift to charity was not to be reduced by the Federal estate tax which was imposed on so much of the estate as the testatrix had bequeathed to individuals. Under the State law the estate tax was payable generally out of the estate and so fell upon and reduced the residuary estate given to charity. As a legislative reversal of the decision in that case, the sentence referred to was incorporated in the revenue act of 1924 and covered Federal estate taxes as well as State inheritance taxes where, either by the terms of the will or by the local law, any such tax operated to reduce the amount given to and received by charity. In view of the retroactive repeal of the sentence, the Treasury took the position that the legislative intent thereby indicated necessarily extended both to the Federal estate tax and to State inheritance taxes.

Under the existing law, most absurd results are reached. Thus, if a testator gives his residuary estate to charity and directs that the Federal estate tax and the State inheritance taxes shall be paid out of such estate, the result may be that nothing is left for charity. In such case, notwithstanding nothing is given to charity and charity receives nothing, still there must be deducted from the gross estate a wholly fictitious sum, namely, what he would have given to charity had he not directed otherwise. The result in all other cases to which the amendment will apply varies from the foregoing example in degree only.

S. Rep. No. 398, 68th Cong., 1st Sess., p. 35 (1939–1 Cum. Bull. (Part 2) 266, 290):

> * * * A sentence has been inserted in paragraph (3) [of subdivision (a)] and in paragraph (3) of subdivision (b) to make it clear that the amount deductible under these paragraphs on account of bequests, legacies, or devises for the specified benevolent purposes shall be the net amount distributable for such purposes, after estate, legacy, or inheritance taxes imposed in respect thereof have been deducted therefrom. It is evident that if a testator leaves a residuary estate of $1,000,000 to a charity, but the estate taxes payable out of the residue reduce the amount actually distributed to the charity to $950,000, only the latter amount should be deductible, in computing the amount of the net estate, as a bequest to charity. This sentence so provides.

H. Conference Rept. No. 844, 68th Cong., 1st Sess., pp. 25–26 (1939–1 Cum. Bull. (Part 2) 300, 308):

> * * * An additional sentence has been added to these paragraphs to provide that the amount deductible under such paragraphs on account of bequests, legacies, devises, or transfers for the specified benevolent purposes shall be the net amount distributable for such purposes after estate, legacy, or inheritance taxes imposed in respect thereof have been deducted therefrom.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

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CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS,

Petitioner,

vs.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

THE DARTNELL-HARDEN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1264.

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS,

Petitioner,

vs.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

In Petitioner's Notice to Respondents of the filing of the Petition for Certiorari in this cause, counsel for Petitioner states that no brief in support of the petition would be filed.

It is regretable that counsel for Petitioner, for reasons best known to himself, elected not to file a brief. We submit that this Court is entitled to the aid of a brief from Petitioner. Furthermore, we also submit that, in all fairness, counsel for Respondents were entitled to know what arguments and authorities counsel for Petitioner relied upon in support of the petition herein, so that they could advisedly meet and answer the arguments and authorities urged. May it not be a fair inference that no brief was

filed because of the fear that it would weaken, instead of strengthen, the petition filed herein.

In view of Petitioner's failure to file a brief, Respondents feel justified, and, in fact compelled to make somewhat more extended counter-suggestions than might otherwise have been necessary.

No Sufficient Reason for Granting the Writ Is Shown by the Petition.

Respondents respectfully submit that the reasons assigned by Petitioner (Pet. 5, 9) are not of the special and important character contemplated by Rule 38 of this Court.

For aught that appears from the record in this cause, the decision of the Circuit Court of Appeals involves merely its construction of Section 807, set out on pages 2, 3 and 7 of the Petition herein, and affects merely the individual interests and rights of the parties to this suit.

The only real reason assigned by Petitioner, as a reason for granting the writ, is the claim (Pet. 8) that the decision in this cause "is of considerable fiscal importance to the Government", and that Petitioner is advised by the Treasury Department that there are "a number of pending cases raising the identical issue involving over $22,000,000 in taxes", and that it is estimated "that a complete survey would disclose about 2000 cases with an aggregate estate tax liability of approximately $50,000,000, which would turn upon the issue herein."

It is only by the importation of this statement, quite outside the record, and of which this Court would not take judicial notice or cognizance, in contra-distinction, for instance, to decisions of reported cases, that counsel for Petitioner endeavors to give this case special significance. Otherwise, it is simply an isolated case between the parties to it. The fact that there are so many cases

pending *is due* to the action of the Commissioner, since he is the sole party on one side of these individual cases, with about 2000 separate citizen taxpayers on the other side. It does not, therefore, present a situation, in which the writ should be granted, because there are pending a great number of cases between various independent citizens, much less, cases in which there has been a conflict of decisions. In other words, the Internal Revenue Department is solely responsible on the one side, for all of these 2000 cases, in which it seeks to impose a tax liability of approximately $50,000,000.

The case at bar involves merely the construction of a statute, and the mere fact that there are a great number of cases pending involving the amount of money suggested, cannot and should not in any manner affect the decision or determination of this Court on its construction of the statute.

Furthermore, the fact that there are about 2000 cases pending, raising the same issue, and which would turn upon its determination; or, in other words, that there are this large number of cases in which 2000 taxpayers are independently insisting upon the contention Respondents urge in this cause, and which was sustained by the District Court and the Circuit Court of Appeals, indicates persuasively and strongly, we submit, that Respondents' contentions, as to the proper construction of Section 807, are sound.

It is to be assumed that the taxpayers in these cases are represented by attorneys, and that these lawyers all construe Section 807 as Respondents in the case at bar have done. We submit that when 2000 or more lawyers independently so construe Section 807, it is persuasive, if not, to all intents and purposes, conclusive proof that this construction and interpretation is proper.

It is to be presumed that the lawyers who drew the

Wills of these decedents did so in the light of their interpretation of Section 807, and that, in their view, the estates of their decedents were thereby made secure against the exactions sought to be imposed by the Commissioner.

It appears from the statement of counsel, that the Commissioner seeks to take $22,000,000 or $50,000,000 in the form of taxes from charities, and, we contend, is endeavoring to do this, to use the language of Judge Hough in the Slocum case (287 F., at page 655) "by deliberate and designed encroachment upon charities", the object of the bounty of about 2000 of our citizens in their Wills, and possibly more that have not yet been disclosed. He is asking this Court to sanction this endeavor on his part.

The statement of Petitioner does not indicate whether these 2000 cases are pending in Court, or, whether some of them, are merely pending in the Internal Revenue Department,—nor, if some of them are pending in Court, that any of them were initiated by the Commissioner for the purpose of getting a judicial determination of the proper construction of Section 807. For aught that appears, the cases pending in Court, if any, were instituted by the taxpayers involved, as was done in the instant case, where, as the record shows, the taxpayer paid under protest the tax assessed, and upon a refund being refused, instituted this suit. Section 807 was enacted in 1932. These 2000 cases must have accumulated over a number of years. It would seem that, as a matter of justice and right, the Commissioner, in view of the interpretation of Section 807 by some 2000 citizens and their lawyers, should long since, on his own initiative, or by his own action, have sought and brought about a judicial determination of the questions involved, and his right to impose the tax under his construction of Section 807.

In any event, the fact that there are some 2000 citizens insisting upon Respondents' interpretation of Sec-

tion 807, we respectfully submit, that the Commissioner should, as the Circuit Court of Appeals in this case indicated, have asked Congress to clarify the law to accord with the Commissioner's views, which could have been done "with very few words of unquestionable meaning", instead of seeking to impose his construction upon this great number of citizen taxpayers, and thereby impose upon them a tax of this enormous aggregate, *all at the expense of the charities involved.*

We urge that this petition should be refused, and that the Commissioner should be admonished by this Court, as did the Circuit Court of Appeals in the pending case, to address himself to Congress, to the end that the law be changed so that the citizen may reasonably understand its application, as required of tax-imposing statutes. The Petitioner has shown that this is not true of the law as it stands. Instead of seeking judicial legislation at the hands of this Court, the Commissioner should, we submit, address himself to Congress, the proper department of our Government.

We respectfully submit that it is not the function of this Court to aid in the collection of taxes, however large the amount, unless the tax law leaves no reasonable doubt of its application to the taxpayer involved, and that the petition fails to present a case contemplated by the Certiorari statute, and the rules of this Court, and that the writ should be denied.

QUESTIONS PRESENTED.

Under this head (Pet. 2), Petitioner undertakes to state the questions presented in this cause. We submit that this statement is quite inadequate and uninformative.

The contentions of the parties will be found fully stated in the Complaint (R. 2-6), the answer (R. 37-40) and the Reply (R. 41-44) to which we invite the Court's attention in this connection.

The real questions presented in this cause are simple and well defined and are as follows:

Respondents' Contention.

Respondents contend that Section 807, when construed, as it must be, in accordance with its plain and unambiguous language, has no application to the case at bar, because, under the law of Illinois, "the law of the jurisdiction under which the estate is administered," the Federal Estate Tax is payable *out of* the *general* or *gross estate* of the decedent, and is not "payable, in whole or in part, *out of* the *bequests, legacies* or *devises otherwise* deductible under this paragraph"—that is to say, in the instant case, are not payable *out of* Mr. Wolf's *residuary* bequests to charity.

The *residuary* bequests to charity are to

Michael Reese Hospital of Chicago.
The Visiting Nurse Association of Chicago.
The University of Chicago.
The Jewish Charities of Chicago.

As the decision of the Circuit Court of Appeals in this case (R. 217, 220) shows, Petitioner conceded throughout, in the District Court and in the Circuit Court of Appeals, that the Federal Estate Tax under the law of Illinois, is a "*paramount charge and expense of administration against the estate, and payable out of the general or gross estate*

of decedent." This was specifically held by the District Court and the Circuit Court of Appeals, the latter saying:

> "Hence, under that jurisdiction (Illinois) such tax *is not payable in whole or in part out of the residuary bequest to charity,*"

as provided by Section 807. Not being payable out of the residuary bequests to charity, Section 807, the District Court and the United States Circuit Court of Appeals held, has no application; and that, therefore, the decision of the Supreme Court in *Edwards* v. *Slocum*, 264 U. S. 61, (affirming, 287 Fed. (C. C. A. 2d) 651), controls the determination of this case. In fact the Circuit Court of Appeals in this case expressly found that Petitioner concedes that if Respondents' construction of Section 807 be upheld, then the decision of *Edwards* v. *Slocum* is decisive of this case.

As the Circuit Court of Appeals said:

> "Appellant (Petitioner) concedes that the facts in that case are substantially identical with those here, except as to the amount involved, and were it not for Section 807, the decision of the Supreme Court in *Edwards* v. *Slocum, supra,* would be controlling here."

In fact, this was stipulated (R. 79) as follows:

> "It is conceded and stipulated that if plaintiffs' theory and construction of Section 807 of the Revenue Act of 1932 is sustained by the Court, then plaintiffs are entitled in this proceeding to recover the sum of $119,069.43, with interest as provided by law," in accordance with the *Edwards* v. *Slocum* case.

Petitioner's Contention.

On the other hand, Petitioner contended, and still contends, that, though under Section 807, the Federal Estate Tax is *a charge* and *an expense of administration,* payable *out of the general or gross estate* by "the law of the jurisdiction under which the estate is administered," that is

to say the law of Illinois, nevertheless, within the scope and meaning of that section, it is "payable, in whole or in part, *out of* the *bequests*" to charities, because its payment operates to reduce the amount of the residue to charities.

Petitioner says (Pet. 8):

> "But the plain fact is that regardless of whether it may be a 'charge' against the entire estate in the sense of a lien or otherwise, it was nevertheless properly paid pursuant to Illinois law in such manner as to reduce the amount distributable to the residuary donees, with the consequence that the residuary bequests bore the economic burden; it was therefore paid 'out of' the residue within the meaning of Section 807."

The utter fallacy and groundlessness of this contention lies in the fact, that though its payment, under the law of Illinois as an expense of administration, does operate to reduce the amount of the residue going to charities, it does not operate to reduce the same *to nearly as great an amount*, or *extent*, as Petitioner seeks to do in this case by his misapplication of Section 807.

Petitioner concedes and has stipulated, as we have said, that if Respondent's construction of Section 807 be sustained, then the case of *Edwards* v. *Slocum* controls the case at bar, and that Respondents, in accordance with that case, correctly computed the Federal Estate Tax at $342,744.60 leaving and preserving $119,069.43, as the residue going to the charities.

On the other hand, the Commissioner, under his construction of Section 807, computed the Federal Estate Tax he seeks to impose at $459,879.57, leaving only $3,223.51 as a residue to charities, instead of $119,069.43.

And, we will point out, that, in order to arrive at this, he resorts to methods and expedients condemned by *Edwards* v. *Slocum*, by imposing *a tax upon a tax*, and employing *algebraic or other complicated calculations*, not within the

cognizance of the average taxpayer, and frowned upon by the Courts.

Under the Law of Illinois, the Federal Estate Tax Is Payable Out of the General or Gross Estate as an Expense of Administration, and Not Out of the Residue.

It is conceded by Petitioner that, under the law of Illinois, the Federal Estate Tax *is payable out of* the *general* or *gross* estate *as an expense of administration* and that this was squarely held in *People* v. *Pasfield*, 284 Ill. 450; *People* v. *The Northern Trust Company*, 289 Ill. 475; and *People* v. *McCormick*, 327 Ill. 547.

In *People* v. *Pasfield, supra*, concerning the payment of the Federal Estate Tax, it was said (p. 554):

> "As the duty (the Federal Estate Tax) is made payable by the executor or administrator to the collector or deputy collector by the express provisions of the statute, the duty is an expense or a charge *against the estate* of the decedent, *and not an express charge* against the shares *of the legatees* or *distributees of the decedent*. The legatees and distributees cannot in any sense be held to have 'received' any part of the duty that is paid to the Government by the executor or trustee or administrator as such estate tax, *and there is no language in the act that will permit a construction that the duty is levied upon each share of the legatees or distributees of the decedent*, as was given the federal act of 1898 by the court in *Knowlton* v. *Moore, supra*."

The Federal Estate Tax Being Payable Under the Law of Illinois Out of the General or Gross Estate, It Cannot Be Said That the Tax Is Payable Out of the Residuary Estate Bequeathed to Charities.

The payment of the tax may operate to reduce the amount of the residuary estate, but this is not equivalent to saying, either directly or indirectly, that the tax *is pay-*

able, or is paid, *out of* the residuary estate, in the language of Section 807, since the amount of money represented by the tax, to which the *net taxable* estate has been subjected, the payment of which, to that extent, has lessened the general or gross estate, *has never been a part of the residuary estate or bequest.*

As the Supreme Court, in *People* v. *Pasfield*, 284 Ill. 450, 454, said:

> "The legatees and distributees cannot in any sense be held to have *'received'* any part of the duty (the Federal Estate Tax) that is paid to the government by the executor or trustee or administrator as such estate tax."

In re Holmes Estate, 40 S. W. (2) 616 (Mo.), at page 618, it is said:

> "The *residuary estate* is that which remains after all obligations constituting charges against the estate and all specific legacies and bequests have been met and discharged."

That the fact that the payment of the Federal Estate Tax out of the gross or general estate operates to reduce the residuary estate bequeathed to charities, is not equivalent to saying, that the tax is paid or is payable out of the residue, is most clearly and concisely stated by the Supreme Court of Wisconsin in *In re Bradley's Will*, 101 N. W. 393, where the Court said (pp. 394, 395):

> "The reasoning of these English cases is to the effect that by the use of the term *'residue'* a testator charges *upon the general estate* all debts, legacies and *other burdens; that no residue exists until such burdens have been paid.* In this view, it is *a solecism* to speak of discharging a debt or other charge *out of the residue*, or *by application* of any particular share of the residue. *Before the residue exists* for assignment or apportionment, all debts and burdens have necessarily and by very force of the terminology been paid, and do not exist. * * * By the payment of such burdens *out of the general estate*, the *residuary*

legacies are not abated. *True, the residue is lessened, but it is in only the residue,* whatever it may be *which is by the will given* to these legatees."

So, again, in *Corbin* v. *Townshend,* 103 Atl. 647, the Supreme Court of Connecticut said (p. 649):

"The federal act of 1916 imposes a tax *payable out of the estate before distribution,* thus differing from the federal inheritance tax of 1908, payable by the individual beneficiaries. It is not a tax upon specific legacies, *nor upon residuary legatees. It is taken from the net estate 'before the distributive shares are determined rather than off the distributive shares.'* Its payment diminishes *pro tanto* the share of each beneficiary. *The executor or administrator must pay the tax out of the estate before the shares of the legatees are ascertained.* It is an obligation against the estate and payable like any expense which falls under the head of administration expenses. *The tax paid is no part of the estate at the time of distribution; it has passed from the estate, and the share of the beneficiaries is diminished by just so much.*

"* * * *The payment of the federal tax is an expense of the estate, as much so as any expense of administration. Until this charge is paid the executor cannot receive his discharge, nor can the beneficiary receive his share.*"

In *McDougald* v. *Low,* 127 Pac. 1027, 1028, the Supreme Court of California said:

"Respondents in their brief correctly state that: 'The legatees at bar take by decedent's will the residue; *the residue is what remains after paying the legacies of the will and the debts and expenses of administration.*'"

The Supreme Court of the United States, in *Young Men's Christian Association* v. *Davis,* 264 U. S. 47, 51, speaking through Mr. Chief Justice Taft, said:

"It was wholly within the power of the testatrix to exempt her altruistic gifts from payment of the tax by specific direction to her executor if she chose.

It must be presumed, when she failed to exercise the power, that she intended the incidence of the tax to be where otherwise by law it must be, and therefore that it was her purpose that her *residuary legatees were to receive all that was left after paying all charges, including this tax, out of her estate.* * * * It is hardly true to say that under the judgment of Ohio courts *these residuary gifts are taxed.* The gifts are and were intended by the testator to be indefinite in amount, and to be what was left after paying funeral expenses, attorney's fees, executor's compensation, debts of the decedent, *and taxes. These donees do not pay the taxes, any more than they pay the funeral expenses, the lawyers, the executors, and the testator's debts.*"

In *United States* v. *Woodward*, 256 U. S. 632, 635, it was said:

"It (the Federal Estate Tax) does not segregate any part of the Estate from the rest and keep it from passing to the administrator or executor for purposes of administration as counsel contend, *but is made a general charge on the gross estate* and is to be paid in money out of any available funds or if there be none, by converting other property into money for that purpose."

Edwards v. Slocum, 264 U. S. 61 (Affirming 287 F. 651), Analyzed and Contrasted With the Case at Bar.

In the case at bar, Respondents computed the tax in identically the same manner as was held to be proper in *Edwards* v. *Slocum*, 264 U. S. 61, and as fully disclosed in the statement of the case and in a note to the decision of the Circuit Court of Appeals in that case in 287 F. 652, 654.

In the Slocum case, it was held and determined that, in order to ascertain the *net taxable estate*, there should be deducted from the gross estate, as provided in Section 303, in addition to the other statutory deductions, the

specific charitable bequests, and also *the entire residuary estate, all of which was bequeathed to charity,* amounting to $35,436,855.70.

In the case at bar, it was held and determined by the District Court and the Circuit Court of Appeals, in accordance with the Slocum case and Respondent's contentions, that, in order to arrive at the *net taxable estate,* there should be deducted from the gross estate the specific charitable bequests, and *the entire residuary* estate amounting to $463,103.08, all of which, as in the Slocum case, was bequeathed to charity.

In the Slocum case, the Commissioner objected to this, and restated the return by adopting all the Executor's figures except those for the residuary for charity, etc., which he reduced to $33,610,506.75, thereby increasing, as the Circuit Court of Appeals in its statement of the case said (p. 652), "the net (taxable) estate by the amount of the reduction", amounting to $1,826,348.95, and computed the tax thereon.

The Commissioner did identically the same thing in the case at bar. In the instant case, he reduced the *residuary* estate, bequeathed to charity, in the sum of $463,103.08 to $3,223.51, and added the difference of $459,879.57 to the net taxable estate and computed the tax thereon. The Federal Estate Tax on this augmented amount, when computed according to the Commissioner's method, by resort to algebraic formula, or other complicated arithmetical calculation, is $459,879.57 (R. 74-78), which is exactly the amount by which the Commissioner has reduced the residuary charitable deductions claimed by Respondents, or, in other words, the exact amount by which he has increased the net taxable estate.

So, also, in the Slocum case, the Court found the net taxable estate was increased by the amount of the higher tax assessed by the Commissioner.

This result, as Judge Hough said in the Slocum case (287 F. 651), "plainly involves paying an estate tax on the amount" of the tax assessed, and this was condemned by both the Circuit Court of Appeals and the Supreme Court in that case.

It will thus be seen that the discrepancy between Respondents' computation and the Commissioner's, arises because the Commissioner has added to the otherwise net taxable estate the amount of the Federal Estate Tax as computed by him, namely, $459,879.57, and has then recomputed the tax upon the otherwise taxable net estate, augmented by the amount of the tax, or, in other words, has computed *and imposed a tax upon the tax itself.*

It is apparent that the Commissioner, in computing the tax in the amount of $459,879.57, on the basis of allowing as deductions for residuary bequests to charities, the sum of only $3,223.51, was compelled to ascertain the amount of the allowable charitable deductions in order to compute the correct Federal Estate Tax, and simultaneously was required to determine the correct Federal Estate Tax in order to ascertain the allowable charitable deductions. This problem, involving two indeterminate unknown factors mutually dependent must, as was pointed out in the Slocum case, be solved by the application of the principles of algebra, and whether it can be solved otherwise, or not, it is conclusively apparent, that it necessarily involves complicated arithmetical calculations far beyond the comprehension of the average taxpayer. Even the Commissioner must realize what the Supreme Court of the United States had in mind when it said in the Slocum case that "algebraic formulae are not lightly to be imputed to legislators."

The Commissioner's computations speak for themselves. We can only suggest that the Court read them. Attempts to explain the Commissioner's computations only em-

phasize their complexity, as is shown by the stipulation of facts between the parties in this case, Plaintiff's Exhibit 1 (Record 71 at pages 74 to 78).

In order to analyze the Commissioner's computation, it is necessary to adopt the terms "true tax" and "trial tax," used by the Commissioner. These terms, which have been coined by the Commissioner, are without meaning when applied to a tax statute, unless the Commissioner is to be permitted to write his own dictionary.

There is no reference either in the statutes, imposing a Federal Estate Tax or in the applicable regulations, to such terms as "trial tax" and "true tax." Taxing statutes impose "taxes," and that is the only thing that can properly be considered.

It is not possible to ascertain the *trial tax* as found by the Commissioner in the amount of $340,310.88 without the use of an algebraic formula, nor is it possible for the taxpayer to understand why the Commissioner's formula of 1—1 (.34—[.8 x .10]) applied to the figure of $340,310.88 will produce the true tax, without an understanding of the principles of algebra.

In the light of the foregoing considerations, it is quite evident, it seems to us, why the Petitioner in the case at bar did not see fit to file a brief in support of his computations and his petition for a writ of certiorari.

Section 807 Being Clear and Unambiguous, Resort Cannot Be Had to the Alleged Legislative History.

Petitioner urges that the legislative history he refers to in his petition (namely, the House and Senate Reports, Appendix B, pages 13-15 of the Petition), shows that Congress intended, by the enactment of Section 807, to overcome the decision of *Edwards* v. *Slocum*, and to render that

decision inapplicable in the future, in situations presented in the case at bar.

In fact, it is manifest that Petitioner's real and ultimate contention is based upon the so-called legislative history of Section 807, and not on the plain and unambiguous language of that section.

The true, complete and controlling legislative history in the case at bar is to be found in the Revenue Act imposing the Federal Estate Tax, from its first enactment in 1916, and its Amendments to date, including Section 807. The language of this Act, and all its Amendments, is clear and unambiguous. It tells the whole story and history, without the necessity of going to the Reports of the House and Senate Committees referred to by Petitioner (Appendix B, pp. 13 and 15).

Permit us to refer briefly to the original Act, and its Amendments.

The Revenue Act of 1916 for the first time imposed a Federal Estate Tax upon *the net taxable estate* left by a decedent.

Section 203 (now Section 303) of this Act specified how this *net taxable estate* shall be ascertained, and provides that "for the purpose of the tax, the value of the *net estate* shall be determined" by deducting from the value of the *gross estate* certain specified items, such as funeral and administration expenses, claims against the estate, unpaid mortgages, etc.

This continued to be the prescribed method of determining *the net taxable estate*, for the purpose of imposing the Federal Estate Tax, until the year 1918, when, *for the first time*, the statute, by amendment, was made to provide for additional deductions from the gross estate, of all bequests, legacies and devises to defined charities, for the purpose of ascertaining the net taxable estate.

This was the state of the law at the time of *Edwards* v. *Slocum*, 264 U. S. 61 (decided February 18, 1924); and the Court, in applying the statute at that time in force, held that in arriving at the *net taxable estate*, not only the specific bequests to charities, *but also the full amount of the residuary estate bequeathed to charities*, should be deducted from the gross estate, for the purpose of ascertaining the net taxable estate.

In 1924, an Amendment identical in language with Section 807 was enacted. This Amendment is set out in the Petition as Appendix A, at page 10. This Amendment was repealed in 1926, but in 1932 was reenacted in its exact language, and is now in force as Section 807, under consideration in this case.

It will be noted that Section 807 *does not impose a tax*, but is merely designed to determine the amount of the deduction from the gross estate, provided for by Section 303 on account of bequests to charities, in order to arrive at the net taxable estate.

As the Circuit Court of Appeals said, in speaking of Section 807:

> "Section 807 *imposes no tax*. It merely declares that *in a certain event* the amount of the deductible bequest is the face amount of such bequest less the amount of such tax. The *contingent event* is that such tax or any part of it *is made payable*, in part or as a whole, *out of such bequest* by any of three means, that is to say—by the will, or by the State law of administrative jurisdiction, or by the law of the jurisdiction imposing the particular tax."

Again, as the Circuit Court of Appeals held, *"the certain event"*, or *"the contingent event"* in question did not arise in the case at bar because, under the law of Illinois, the law of administrative jurisdiction, the Federal Estate Tax *is not payable out of the bequest to charity*, whether specific or residuary, but, on the contrary, is specifically

made payable out of the general or gross estate, as an expense of administration, and hence Section 807 has no application to the case at bar, but leaves it determinable solely by the decision of the Supreme Court in *Edwards* v. *Slocum*.

The Revenue Act with its Amendments, including Section 807—and particularly Section 807—is clear and unambiguous, and does not require or permit resort to Petitioner's so-called legislative history.

The record and opinion of the Circuit Court of Appeals shows, that Petitioner in the District Court and in his brief in the Circuit Court of Appeals, admitted, to all intents and purposes, that Section 807 is not ambiguous.

As the Circuit Court of Appeals says, counsel for Petitioner in the District Court said (Rec. 201):

> "*The Government does not at all contend that this statute* (*Sec. 807*) *is ambiguous.* We simply want it clear that if the Court finds it ambiguous, the Court may examine anything it desires."

Neither the District Court, nor the Circuit Court of Appeals, found Sec. 807 ambiguous, but, on the contrary, found it unambiguous, and held that, under this section, pursuant to the laws of Illinois, "the law of the jurisdiction under which the estate is administered", the Federal Estate Tax *is not payable* out of the bequests to charity, whether residuary or specific, but is specifically *payable out of the gross* or *general estate*.

Furthermore, the Circuit Court of Appeals specifically found that petitioner conceded, in both the District Court and the Circuit Court of Appeals, that under the law of Illinois, the Federal Estate Tax is a paramount charge and expense of administration against the estate.

And, continuing, the Court of Appeals said that Petitioner "*seeks to parry* the force of the clear language of the section *by resort to legislative history*, in order to

arrive at what he claims to be the true policy and intent of Congress."

As the Circuit Court of Appeals said:

> "It is conceded that prior to the enactment of mandatory Section 807 of the Act of 1932, there was no federal enactment which authorized the deduction of a federal estate tax from residuary bequests to charities in fixing the net taxable estate. *Edwards* v. *Slocum*, 264 U. S. 61."

And, immediately continuing, the Court said:

> "Appellant concedes that the facts in that case (*Edwards* v. *Slocum*) are substantially identical with those here, except as to the amounts involved, and were it not for Section 807, the decision of the Supreme Court in *Edwards* v. *Slocum*, *supra*, would be controlling here."

So in the petition herein it is said (p. 6):

> "The situation is substantially identical with that presented in *Edwards* v. *Slocum*, 264 U. S. 61, in which the issue was decided against the government under the Revenue Act of 1918."

The question, however, is not primarily what Congress intended, but whether it translated its alleged intent into the language and phraseology of the enactment. It is fundamental that legislative intent must, if at all possible, be determined from the language employed. If the language employed be plain and unmistakable and unambiguous, which we insist is true of Section 807, and as was found by the District Court and the Circuit Court of Appeals, then the intent it reflects controls, whatever the legislative intent may have been outside of the enactment.

There are only two sources available, from one or both of which the Federal Estate Tax can be made payable, or can be paid. One is *out of* the *general or gross* estate, and the other is *out of bequests*, either specific or residuary. Sec. 807, by its plain and direct terms, extends only to

the second, namely, where either by the Will or by the law, the tax *is payable out of bequests* to charities, either specific or residuary, and it is only to this that Sec. 807 can, we submit, be held to apply. The law of this jurisdiction, Illinois, making the tax payable solely *out of the general or gross estate*, as an expense of administration, *and not out of the bequests* to charity, whether specific or residuary, Sec. 807 can have no application in the instant case.

If Congress had had in mind the payment of Federal Estate Taxes *out of the general or gross estate*, as well as the payment *out of the bequests to charities*, and thus had intended to cover *both sources* out of which payment could be made, it could easily have said so.

As the Circuit Court of Appeals said:

> "Appropriate language to this end, and to reach both alternatives, was readily available to it, which, however, it did not employ."

The Circuit Court of Appeals indicated it would have been a simple matter for Congress to have enacted a statute reading, that if by the Will, or by the law of administrative jurisdiction, the Federal Estate Tax is payable, either out of the *general or gross estate*, or out of *the bequests to charities*, either specific or residuary, then the reduction in the amount of the charitable exemption provided for in Section 807, should be made.

In Support of the Cogent Reasons Why the Alleged Legislative History of Section 807, and Petitioner's Construction of This Section, Should Not Influence the Court in Granting the Writ Prayed for, We Urge the Following Well-Established and Fundamental Principles of Law:

(a) Legislative history cannot be resorted to unless there be an ambiguity of language in the Act sought to

be construed, and this is especially applicable where a tax statute is involved.

Hamilton v. *Rathbone*, 175 U. S. 414.
Thompson v. *United States*, 246 U. S. 547, 551.
Old Colony Railroad Co. v. *Commissioner*, 284 U. S. 552, 560.

(b) A Court cannot enact a law under the pretense of construing one.

Heiner v. *Donnan*, 285 U. S. 312, 331.
United States v. *Goldenberg*, 168 U. S. 95, 102.

(c) It is a universal rule that tax-imposing statutes are to be construed strictly against the taxing power, and in favor of the taxpayer.

Gould v. *Gould*, 245 U. S. 151, 153.
United States v. *Merriam*, 263 U. S. 179, 187, 188.

(d) The law exempting charitable bequests should be liberally construed to favor the same.

Harrison v. *Barker Annuity Fund*, 90 F. (2d) 286.
United States v. *Pleasants*, 305 U. S. 357.
United States v. *Proprietors of Social Law Library*, 102 F. (2d) 481, 482.
Union & New Haven Trust Company v. *Eaton*, 20 F. (2d) 419.

(e) Construction is against double taxation.

State of Tennessee v. *Whitworth*, 117 U. S. 129, 137.

(f) For greater reason, construction is against a tax upon a tax.

Edwards v. *Slocum*, 264 U. S. 61, 63.
Edwards v. *Slocum*, 287 F. 651, 655 (C. C. A. 2d).

Clark v. *United States*, 27 F. (2d) 887, 888 (D. C. Mass.).

Old Colony Trust Co. v. *Malley*, 15 F. (2d) 105, 106 (D. C. Mass.).

Nichols v. *Leach*, 50 F. (2d) 787, 792 (C. C. A. 1st).

(g) The long established practice of the law is not to regard the incidence of a tax in the levying of a tax.

Edwards v. *Slocum*, 264 U. S. 61.

(h) Algebraic formulae are not lightly to be imputed to legislators.

Edwards v. *Slocum*, 264 U. S. 61, 63.

Conclusion.

We respectfully submit that the petition in this case should be denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 103

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS,

Petitioner,

vs.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

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IN THE

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OCTOBER TERM, 1942.

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CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS,

Petitioner,

vs.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

STATEMENT.

We wish at the outset to call the Court's attention again to what we said on pages 2 to 5, inclusive, of our brief in opposition to the Petition for a Writ of Certiorari, and to reiterate what we there said.

There is no way available to us, so far as we know, to test the accuracy of the statements made by the Petitioner

in reference to the number of pending cases claimed to raise the issue involved in this cause, and the aggregate of the tax liabilities therein. Whatever influence this may have had in granting the Writ of Certiorari, we are confident that it cannot affect this case adversely to Respondents. As we said, this case involves merely the construction of a statute, and the mere fact that there are a great number of cases pending, involving the amount of money suggested, cannot, and should not, in any manner affect the decision or determination of this Court in its construction of the statute.

On the contrary, as we pointed out, the fact that there are 2,000 taxpayers represented, presumably, by at least 2,000 lawyers all independently construing Section 807 the same as Respondents in the case at bar, is at least strongly persuasive proof not only that Section 807 is susceptible of this construction but also that this construction and interpretation is proper.

Question Presented.

The real question in this case is how, in the light of Section 303 (a) (3), as amended by Section 807, the amount of the Federal estate tax is to be ascertained?

Respondents urge that the correct Federal estate tax is $342,744.60, under Section 303 (a) (3), as amended by Section 807, properly construed and applied, leaving $119,069.43 as a residue going to charity.

On the other hand, Petitioner asserts that the Federal estate tax is $459,879.57, leaving $3,223.51 as a residue to charity, instead of $119,069.43.

It will be found that Petitioner's Brief resolves itself into two ultimate contentions:

The first contention, reiterated throughout his Brief (pp. 4, 6, 7, 11), to which we will more fully advert

later in our Brief, urges that though it be said that under the law of Illinois the Federal estate tax is payable out of the general or gross estate as an expense of administration, yet because of the fact that the payment of the tax out of the gross estate *reduces* the amount of the residuary bequest to charities, it follows that the Federal estate tax is payable out of the residuary bequest to charities, within the meaning of Section 807. This, we submit, is a complete *non sequitur*, as we will show, since the alleged reduction under Petitioner's construction of Section 807 is many times greater (that is, approximately 37 times greater) than the reduction which results from Respondents' construction of Section 807. The payment of the tax of $342,744.60 out of the gross estate, as an expense of administration, according to Respondents' computation, still leaves $119,069.43 as a residue to charities, while the tax of $459,879.57, computed on Petitioner's theory and construction of Section 807, leaves only $3,223.51 as a residue to charities.

The next and only other real contention of Petitioner is that, though Petitioner does not really contend that Section 807 is ambiguous, nevertheless, in the light of the so-called legislative history referred to by Petitioner in his brief, it must be held that the Federal estate tax is payable out of the residuary bequests to charities, though it is admitted that the Federal estate tax is, under the law of Illinois, payable out of the gross or general estate of the decedent, as an expense of administration.

We respectfully submit that Petitioner is, in fact, not seeking to enforce the unambiguous terms of Section 807, but, ignoring Section 807 and its plain meaning and intent, is seeking, to all intents and purposes, to supersede Section 807 by the so called legislative history, and accordingly to enforce the alleged legislative history, and not Section 807.

SUMMARY OF ARGUMENT.

Section 807 of the Revenue Act of 1932 Amending Section 303(a)(3) of the Revenue Act of 1926 Is Not Applicable in the Computation of Federal estate taxes on the Estate of Henry M. Wolf, and the Courts Below Were Correct in So Holding and Deciding.

1. Under controlling decisions of the Supreme Court of Illinois, the Federal estate tax is a paramount charge and expense of administration which is payable out of the general or gross estate of the decedent.

2. In Illinois, the Federal estate tax cannot be paid out of the residue of the decedent's estate bequeathed to charitable organizations within the meaning of Section 807, since such residue does not exist until Federal estate taxes, claims and expenses of administration have been paid from the general or gross estate of the decedent.

3. Since the language of Section 807 is clear and unambiguous and by its express terms excludes this estate, there is no need to resort to the legislative history of the Section to ascertain the intent of Congress.

4. A literal reading of Section 807 as contended for by respondents does not produce an absurd result.

5. Every intendment is in favor of respondents' construction of Section 807 and against the petitioner's construction of said Section because (a) the petitioner's construction, by ignoring the express words of the statute, would secure a larger Federal estate tax, (b) the petitioner's construction diminishes the bequests which the residuary charitable legatees, in whose favor taxing statutes are always liberally construed, would otherwise receive from the decedent's estate, (c) the petitioner's construction would result in the imposition of a tax upon a tax which would have to be computed by means of an algebraic or complicated arithmetical formula, neither of which is favored by the courts.

6. Furthermore, were it proper to resort to the legislative history of Section 807 to ascertain the intent of Congress, such legislative history is ambiguous and confusing and shows no intent on the part of Congress to impose a tax upon a tax and thereby to deprive the charitable organizations, which are the residuary legatees under this decedent's Will, of the full measure of the decedent's bounty.

Section 807, If Construed as Petitioner Contends, Would Be Unconstitutional Because It Would Require (a) That the Incidence of the Tax Must Be Regarded in the Levying of the Tax, and (b) That the Amount of the Tax Be Measured by the Tax Itself, or in Other Words That a Tax Be Imposed Upon a Tax.

If Section 807 Is Held to Apply to This Estate and to Be Constitutional, the Commissioner of Internal Revenue Is Not Entitled to Use an Algebraic or Complicated Arithmetical Formula to Compute the Amount of the Federal Estate Taxes on This Estate.

ARGUMENT.

The real questions presented in this case are simple and well defined.

Respondents' Contentions.

Respondents contend that Section 807, when construed, as it must be, in accordance with its plain and unambiguous language, has no application to the case at bar, because, under the law of Illinois, "the law of the jurisdiction under which the estate is administered", the Federal estate tax is payable *out of the general or gross estate* of the decedent, *as an expense of administration*, and is not "payable, in whole or in part, *out of the bequests, legacies or devises otherwise deductible under this paragraph*"—that is to say, in the instant case, are not payable *out of* Mr. Wolf's *residuary* bequests to charity.

The *residuary* bequests to charity are to

Michael Reese Hospital of Chicago,
The Visiting Nurse Association of Chicago,
The University of Chicago,
The Jewish Charities of Chicago.

As the decision of the Circuit Court of Appeals in this case (R. 217, 220) shows, Petitioner conceded throughout, in the District Court and in the Circuit Court of Appeals (and, it will be seen, that he concedes this in his brief (pp. 7, 11, filed herein)), that the Federal estate tax under the law of Illinois, is a "*paramount charge and expense of administration which is payable out of the gross estate of decedent.*" This was specifically held by the District Court and the Circuit Court of Appeals, the latter saying:

> "Hence, under that jurisdiction (Illinois), such tax is not payable in whole or in part out of the residuary bequests to charity,"

as provided by Section 807.

Not being payable out of the residuary bequests to charity, the District Court and the Circuit Court of Appeals held that Section 807 has no application and that, therefore, the decision of this Court in *Edwards* v. *Slocum*, 264 U. S. 61 (affirming 287 Fed. (C. C. A. 2nd) 651), controls the determination of this case. In fact the Circuit Court of Appeals in this case expressly found that petitioner concedes that if respondents' construction of Section 807 be upheld, then the decision of *Edwards* v. *Slocum* is decisive of this case, *and Petitioner*, in his brief filed herein, page 5, *reaffirms this concession.*

As the Circuit Court of Appeals said:

> "Appellant (Petitioner) concedes that the facts in that case are substantially identical with those here, except as to the amounts involved, and were it not for Section 807, the decision of the Supreme Court in *Edwards* v. *Slocum, supra,* would be controlling here."

In fact, this was stipulated (R. 79) as follows:

> "It is conceded and stipulated that if plaintiffs' theory and construction of Section 807 of the Revenue Act of 1932 is sustained by the Court, then plaintiffs are entitled in this proceeding to recover the sum of $119,069.43, with interest as provided by law"

in accordance with the *Edwards* v. *Slocum* case.

Petitioner's Contention.

Petitioner contended, and still contends, throughout his brief (Br. 4, 6, 7, 11) that, though it be conceded, that, under Section 807, the Federal estate tax is a *charge and an expense of administration, payable out of the general or gross estate* by "the law of the jurisdiction under which the estate is administered", that is, by the law of Illinois, nevertheless, within the scope and meaning of that section, it is "payable, in whole or in part, out of the bequests" to charities, *because its payment operates to reduce the amount of the residue to charities.*

The utter fallacy and groundlessness of this contention lies in the fact, that, though its payment, under the law of Illinois as an expense of administration, does operate to reduce the amount of the residue going to charities, it does not operate to reduce the residue to nearly as great an amount, or extent, as petitioner seeks to do in this cause by his misapplication of Section 807. It is, therefore, clear that the *mere reduction* of the residue is not determinative of whether the tax is *payable out of* the residue.

Petitioner concedes and has stipulated, as we have said, that if Respondents' construction of Section 807 be sustained, then the case of *Edwards* v. *Slocum* controls the case at bar, and that Respondents, in accordance with that case, correctly computed the Federal estate tax at $342,744.60, leaving and preserving $119,069.43 as the residue going to charities.

On the other hand, the Commissioner, under his construction of Section 807, computed the Federal estate tax he seeks to impose at $459,879.57, leaving only $3,223.51 as a residue to charities, instead of $119,069.43.

And, as we will point out, in order to arrive at this, he resorts to methods and expedients condemned by *Edwards* v. *Slocum*, by imposing *a tax upon a tax*, and employing *algebraic or other complicated calculations* not within the cognizance of the average taxpayer, and frowned upon by this Court.

The Commissioner is not satisfied that the bequest to charities be "*reduced*" to the extent of $342,744.60, leaving $119,069.43 to charities, but seeks to absorb practically the whole of the residuary estate of $463,103.08, leaving only the neglible amount of $3,223.51 to charities, by imposing a tax upon a tax, and imposing an estate tax on the very amount of the estate tax assessed, thus augmenting the taxable estate, as Judge Hough said in the Slocum case "by a deliberate and designed encroachment upon charities."

It will thus be seen that the bequests to charities are not merely *reduced* by the amount of the Federal estate tax, but, in truth and in fact, by a fictitious amount resulting from the imposition of a Federal estate tax in part upon the very Federal estate tax imposed.

As we will show in our analysis of the Commissioner's computation, the Commissioner adopted as "a true tax", or as a "trial tax", the sum of $340,310.88, which is substantially the same as the correct tax of $342,744.60, found and contended for by Respondents. Not satisfied with this, however, he proceeds to impose a tax upon a tax, and arrives at $459,879.57, as the Federal estate tax, and then adds this amount to the net taxable estate, and computes the tax thereon, which results in the same figure, $459,879.57, just as was found and condemned by this Court in *Edwards* v. *Slocum*.

It is by this form of juggling of facts and figures that he practically dissipates the whole of the residuary estate left to charities, contrary to, and in violation of, the charitable disposition of the residue of the estate by the Will of the testator.

Section 807 Does Not Apply in the Computation of Federal Estate Taxes on This Estate, as Was Held and Decided by the District Court and the Circuit Court of Appeals.

The Revenue Act of 1916 provided that for the purpose of the tax, the value of the *net estate* should be determined by making certain deductions from the gross estate, such as "funeral expenses, administration expenses, claims against the estate, unpaid mortgages," etc.

Deductions for charitable bequests were first allowed in the Revenue Act of 1918 and have been allowed in every revenue act since that time, by providing that there shall *be deducted* from the gross estate in order

to arrive *at the net taxable estate* "the amount of all bequests, legacies, devises, or transfers" to charities.

It will be noted that no Revenue Act makes any distinction between specific bequests to charities or bequests of the residuary estate. The bequests of both are deductible and this was specifically held in *Edwards* v. *Slocum*, *supra*.

Section 807 of the Revenue Act of 1932 was adopted as an amendment to Section 303(a)(3) of the Revenue Act of 1926 and purports to impose a limitation on the amount of charitable deductions, as follows:

> "SEC. 807. Deductions of Bequests, etc., to Charity. Sections 303(a)(3) and 303 (b)(3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:
>
> > 'If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, *payable in whole or in part out of the bequests, legacies, or devises* otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.'" (C. 209, 47 Stat. 169; italics supplied.)

Section 807 does not, as was held by the Circuit Court of Appeals in this case, impose any tax, but merely purports to impose a limitation on the amount of the charitable deduction, but, it will be noted, only in the event and on the condition mentioned in Section 807, that, either under the will or by the law of the local jurisdiction the federal estate tax is "payable in whole or in part out of the bequests, legacies or devises" to charities, and then "the amount deductible under this paragraph shall be the amount of such bequests, legacies or devises reduced by the amount of such taxes."

It is manifest that, in order to make this Section 807 applicable, it must appear that either by the will or the law of the local jurisdiction, the Federal estate tax is *payable out* of the bequests to charities and it makes no difference whatsoever whether the bequests be specific bequests to charities or a bequest of the residuary estate. If, therefore, the Federal estate tax is not *payable out* of the bequests to charities, either specific or residuary, but on the contrary, either by the terms of the will or the local law, is payable as an expense of administration *out of* the gross estate, then Section 807 has no application.

In such a case the whole of the specific bequests to charities, as well as the whole of the residuary estate bequeathed to charities, are deductible from the gross estate in order to arrive at the net taxable estate, as was held in *Edwards* v. *Slocum, supra.*

Since, in the instant case, the will makes no provision for the payment of federal estate taxes, *it is obvious that the laws of the State of Illinois must determine how and out of what Federal estate taxes shall be paid.*

The respondents maintain, and the District Court and the Circuit Court of Appeals held, that under the laws of the State of Illinois the Federal estate tax is an expense of administration and is therefore, under the Illinois law, *payable out of the general or gross estate* of the decedent, and hence is *not "payable in whole or in part out of"* the decedent's *residuary* bequests to charity within the meaning of Section 807 of the Revenue Act of 1932. *People* v. *The Northern Trust Company*, 289 Ill. 475, 477; *People* v. *Pasfield*, 284 Ill. 450, 453.

The petitioner concedes that in Illinois the federal estate tax is an expense of administration, but insists, as we have said, that because payment of such taxes *out* of the general estate of the decedent operates to *reduce* the residuary estate bequeathed to charities, the Federal estate tax

is therefore in effect payable out of the residue of the decedent's estate within the meaning and intent of the statute. This contention of the petitioner is not supported either by principle or by authority, and we are confident that it will not appeal to this Court any more than it did to the courts below.

In *People* v. *McCormick*, 327 Ill. 547, the Supreme Court of Illinois said (p. 561):

> "In *People* v. *Pasfield*, 284 Ill. 450, and *People* v. *Northern Trust Co.*, 289 id. 475, this court considered the question whether the Federal estate tax should be deducted before computing the State tax, *and it was there held that the Federal tax was an expense of administration* and should be deducted as such before computing the State tax. * * * *A Federal estate tax has been declared by this court in cases referred to, to be a charge of administration.*"*

If the Federal estate tax is not by the law of Illinois *payable out of the bequests* to charities, but on the contrary is *payable out of the general or gross estate of the decedent as an expense of administration*, Section 807 has no application to this estate.

It will be noted that the language of Section 807 is imperative. It says that in order to make the statute applicable the Federal estate tax must, by the laws of the State of Illinois, be "payable * * * out of the bequests" to charities. When it is said that the tax is payable by the terms of a will or by the mandate of the law, it means that it is to be paid, or shall be paid, or is required to be paid and not merely that the effect of payment might result *in the reduction* of a residuary charitable bequest. If by the terms or direction of a will or by the mandate of the law it is said that a tax is to be paid *out of* the *gross or general estate* it cannot by any process of

* In general, italics in quotations are supplied.

construction be said to be payable *out of* the *residuary bequests*, nor if it is payable *out of* the *residuary bequests* can it be said that it is payable *out of the gross or general estate* of the decedent.

A *residue*, we say, is only what remains in an estate after the payment of all claims, expenses of administration, including Federal and State taxes and all general and specific legacies. Taxes cannot be, and are not payable *out of* something that does not exist until after such payment. Before there can be a residue, the Federal estate taxes with all other items must first be paid, and then only is there a *residue*. It follows, therefore, that the Federal estate taxes are paid *out of* the *gross estate* before the residue is created. The bequest to the charities is the *residue* of the decedent's estate, and nothing is paid *out of* this residue because all payments have been previously made *out of* the gross or general estate of the decedent. It is no answer for the petitioner to say that, whether the Federal estate tax be paid out of the general estate or out of the bequests of the residue to charities, the result is the same, in that in each instance the payment reduces the amount actually going to charities. This is *not* what Congress has said in Section 807. The question is, what does the amendment in plain and unequivocal terms say? It is no answer to say that Congress *intended* it to mean something else.

We insist that Section 807 is susceptible only of the construction that we have placed upon it and that there is no room for speculation as to the intention of Congress other than as disclosed in the plain terms and meaning of the language employed. It would have been a simple thing for the Congress to have used language in Section 807 that would have clearly and unquestionably accomplished what the petitioner is seeking to do in the instant case. *This, however, it did not do.*

Under the law of Illinois, an executor coming into assets

of an estate is required, before final distribution and the closing of the estate, to pay, out of the funds of the estate in his hands all claims, general and specific legacies, the actual costs of administration and also the Federal estate tax, which by the law of Illinois is held to be an expense of administration. It is only after this has been done that there can be a residue for the executor to turn over to the residuary legatees. It is absolutely settled that under the Federal Estate Tax Law, the executor is required to pay this tax before distribution. This was decided by this Court in *Riggs* v. *del Drago* on November 9, 1942, and previously in many other cases.

By the law of Illinois, the executor is not required to set aside the residue of the estate going to the residuary beneficiaries and thereupon pay the Federal estate taxes therefrom. On the contrary, the executor is required to pay Federal estate taxes from the gross or general estate of the decedent the same as he pays other expenses of administration, and then and then only, is he required or permitted to make distribution to the residuary legatees.

In *People* v. *Pasfield*, 284 Ill. 450, the Supreme Court of Illinois, in speaking of the Federal estate tax, said (p. 454):

> "As the duty is made payable by the executor or administrator to the collector or deputy collector by the express provisions of the statute, the duty is an expense or a charge *against the estate* of the decedent, and not an express charge against the shares of the legatees or distributees of the decedent. *The legatees and distributees cannot in any sense be held to have 'received' any part of the duty that is paid to the government by the executor or trustee or administrator as such estate tax*, and there is no language in the act that will permit a construction *that the duty is levied*

upon each share of the legatees or distributees of the decedent, as was given the federal act of 1898 by the court in *Knowlton* v. *Moore, supra.*"

In the absence of a specific provision of a will or the mandate of the law, it can never be said that the Federal estate tax is payable *out of* the residuary estate, whether bequeathed to charities or otherwise. The payment of the tax may operate *to reduce* the amount of the residuary estate, *but this is not equivalent to saying,* either directly or indirectly, that the tax is payable or is paid *out of* the residuary estate, and this for a very simple and conclusive reason. This reason is that the amount of money represented by the tax to which the net or taxable estate has been subjected, the payment of which has to that extent reduced the general estate, *has never been a part of the residuary bequests or estate.* As was said in *In re Holmes' Estate,* 40 S. W. (2) (Mo.) 616, at pages 618:

"The residuary estate is that which remains after all obligations constituting charges against the estate and all specific legacies and bequests have been met and discharged."

This principle is most clearly and concisely stated by the Supreme Court of Wisconsin in *In re Bradley's Will,* 101 N. W. 393, where the Court said (pp. 394, 395):

"The reasoning of these English cases is to the effect that by the use of the term 'residue' a testator charges *upon the general estate* all debts, legacies and other burdens; *that no residue exists until such burdens have been paid.* In this view, it is *a solecism* to speak of discharging a debt or other charge *out of the residue,* or *by application* of any particular share of the residue. *Before the residue exists* for assignment or apportionment, all debts and burdens have necessarily and by very force of the terminology been paid, and do not exist. * * * By the payment of such burdens *out of the general estate,* the *residuary leg-*

acies are not abated. *True, the residue is lessened, but it is only the residue,* whatever it may be *which is by the will given to these legatees.*"

This has also been clearly recognized by the Supreme Court of Illinois in *People* v. *Pasfield,* 284 Ill. 450, 454, *supra,* p. 14.

In *Corbin* v. *Townshend,* 103 Atl. 647, the Supreme Court of Connecticut said (p. 649):

"The federal act of 1916 imposes a tax *payable out of the estate before distribution,* thus differing from the federal inheritance tax of 1908, payable by the individual beneficiaries. It is not a tax upon specific legacies, *nor upon residuary legatees. It is taken from the net estate 'before the distributive shares are determined rather than off the distributive shares.'* Its payment diminishes *pro tanto* the share of each beneficiary. *The executor or administrator must pay the tax out of the estate before the shares of the legatees are ascertained.* It is an obligation against the estate and payable like any expense which falls under the head of administration expenses. *The tax paid is no part of the estate at the time of distribution; it has passed from the estate, and the share of the beneficiaries is diminished by just so much.*

"• • • *The payment of the federal tax is an expense of the estate, as much so as any expense of administration. Until this charge is paid the executor cannot receive his discharge, nor can the beneficiary receive his share.*"

In *McDougald* v. *Low,* 127 Pac. 1027, 1028, the Supreme Court of California said:

"'Respondents in their brief correctly state that: "The legatees at bar take by decedent's will the residue; *the residue is what remains after paying the legacies of the will and the debts and expenses of administration.*" That respondents' conception of what is meant by the residue in the law of wills and administration is correct is amply supported by the following authorities.'" (Citing cases.)

In fact petitioner has admitted that this position is well taken. In his brief in the Circuit Court of Appeals, page 10, he said:

> "Under these decisions (*People* v. *Northern Trust Company*, 289 Ill. 475; and *People* v. *Pasfield*, 284 Ill. 450), it is, we think, obvious, First, That there can be no residuary estate until the federal estate tax has been paid, and Second, That since the federal estate tax is a paramount charge or expense of administration it must be paid out of assets of the estate, which *otherwise* would have constituted decedent's residuary estate."

If the Federal estate tax is payable out of the assets which would *otherwise* constitute decedent's residuary estate, it is manifestly impossible that the Federal estate tax be payable *out of* the residuary estate of the decedent.

In note 5, on page 12 of Petitioner's Brief herein, it is said:

> "Indeed, the rule in most states is that in the absence of a contrary direction by the testator the weight of the tax falls upon the residuary legatees or devisees."

And thereupon, a number of cases are cited.

An examination of these cases shows that none of them involved a determination of the amount of the Federal estate tax, or the method of its computation or determination. Certain of them hold that the Federal estate tax is a charge against the gross estate and an expense of administration payable out of the same, and recognize that this operates to lessen or reduce the residue. This is, of course, self-evident. None of them hold, however, that the payment of the Federal estate tax out of the gross estate, as a charge and expense of administration, is tantamount or equivalent to saying that the Federal estate tax is payable out of the residue, whether bequeathed to charities, within the language or meaning of Section 807, or otherwise.

The note itself recognizes that in certain of the States a different rule prevails, as in Florida and Kentucky, and in Pennsylvania and New York.

Before distinguishing these cases we wish to point out that all of the cases in which the term "residue" is discussed are not easily reconciled because the courts have not always felt it necessary or important to define the term with sufficient clarity to enable the reader to know whether or not the court had in mind the amount of the testator's estate remaining after the payment of all specified bequests, claims and expenses of administration or the amount remaining after the payment of all specified bequests merely but before the payment of any claims or administration expenses.

What is meant by the term "residue" would seem to be a matter for determination by the State courts. The better reasoned decisions fall into two fairly definite categories. *The weight of authority holds that the residue of an estate is only that which remains after all debts, expenses, charges of administration and legacies, including taxes, have been paid.* This is the law in Illinois (*People* v. *The Northern Trust Company*, 289 Ill. 475, 477; *People* v. *Pasfield*, 284 Ill. 450, 454); in Wisconsin (*In re Bradley's Will*, 101 N. W. 393, 394, 395); in Indiana (*State* v. *First Calumet Trust & Savings Bank*, 125 N. E. 200, 202); in Minnesota (*State, ex rel. Smith* v. *Probate Court of Hennepin County*, 166 N. W. 125); in Connecticut (*Corbin* v. *Townshend*, 103 Atl. 647, 649); in New Jersey (*In re Roebling's Estate*, 104 Atl. 295, 296); in Maryland (*Home for Incurables* v. *Bruff*, 153 Atl. 403, 410); and in California (*McDougald* v. *Low*, 127 Pac. 1027, 1028). It appears also to be the law in Ohio (*Young Men's Christian Association* v. *Davis*, 140 N. E. 114, 115).

In other jurisdictions, the residue is considered as formed at the time of the decease of the testator and the residuary legatees take the residuary estate, subject to or charged with the payment of claims and administration

expenses. This is the law in Massachusetts (*Old Colony Trust Co.* v. *Smith*, 165 N. E. 657, 658; *Plunkett* v. *Old Colony Trust Co.*, 124 N. E. 265, 267). It is probably the law in Kentucky (*Hampton's Admrs.* v. *Hampton*, 221 S. W. 496, 497); and in New Hampshire (*Amoskeag Trust Co.* v. *Trustees of Dartmouth College*, 200 Atl. 786, 788).

Neither the authorities cited by petitioner, nor any other authorities with which we are familiar, hold that in a jurisdiction such as Illinois, where the Federal estate tax is an expense of administration and where the residuary legatees do not take the residuary estate subject to administration expenses, the Federal estate tax is payable out of the decedent's residuary estate. The case of *Young Men's Christian Association* v. *Davis*, 140 N. E. 114, 115, cited by the petitioner at page 12 of his brief, supports the respondents' and not the petitioner's position. When the case was before the Supreme Court of Ohio (140 N. E. 114), that Court said (p. 115):

> "This fact affords a clear and conclusive presumption that all charges imposed by the law or by the testator should be paid *out of the estate* before any rights should ripen in behalf of the residuary devisees or legatees under this item. This view supports the undoubted intention of the testator in the making of the will in all its various provisions, as well as the plain provisions of the federal statute. It is unnecessary to refer to this statute further than to quote a few lines from section 408 (40 Stat. 1100 (U. S. Comp. St. Ann. Supp. 1919, § 6336-3/4i)):
>
> " 'It being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent, the tax shall be paid *out of the estate* before its distribution.' "

The above quotation clearly indicates that the Federal estate tax is to be paid out of the *general* rather than out of the *residuary* estate of the decedent. This Court, in affirming *Young Men's Christian Association* v. *Davis*, 264

U. S. 47, 51, confirmed this opinion when, speaking through Mr. Chief Justice Taft, it said:

> "It was wholly within the power of the testatrix to exempt her altruistic gifts from payment of the tax by specific direction to her executor if she chose. It must be presumed, when she failed to exercise the power, that she intended the incidence of the tax to be where otherwise by law it must be, and therefore that it was her purpose that *her residuary legatees were to receive all that was left after paying all charges, including this tax, out of her estate.* The donees of the altruistic gifts profit much by the deduction made under subdivision (3), even though they do receive less by the amount of this tax. Had subdivision (3) not been in the statute, the tax would have been much heavier, measured by a higher percentage of the value of the whole estate including their gifts. It is hardly true to say that under the judgment of Ohio courts these residuary gifts are taxed. The gifts are and were intended by the testator to be indefinite in amount, and to be what was left after paying funeral expenses, attorney's fees, executor's compensation, debts of the decedent, and taxes. *These donees do not pay the taxes, any more than they pay the funeral expenses, the lawyers, the executors, and the testator's debts.*"

It is clear that if the residuary donees do *not* pay taxes and administration expenses, such taxes and administration expenses could not be payable *out of* the bequests to the residuary donees.

It will be noted that the *Davis* case, and that of *Edwards* v. *Slocum*, were both decided on the same day, February 18, 1924.

In *United States* v. *Woodward*, 256 U. S. 632, 635, this Court, in an unanimous opinion, speaking through Mr. Justice Van Devanter, said:

> "It (the Federal tax) does not segregate any part of the estate from the rest and keep it from passing to the administrator or executor for purposes of ad-

ministration as counsel contend, *but is made a general charge on the gross estate* and is to be paid in money out of any available funds or if there be none, by converting other property into money for the purpose."

We believe it is plain from the foregoing discussion that, in a jurisdiction such as Illinois, Federal estate taxes could not be payable *out of* the residuary estate of a decedent. We submit therefore that Section 807 of the Revenue Act of 1932 cannot possibly be applied to this estate.

This Court, in *Riggs* v. *del Drago, et al.*, decided November 9, 1942, it seems to us, has clearly settled this question, saying, among other things:

"We are of opinion that Congress intended that the Federal Estate Tax should *be paid out of the estate as a whole* and that the applicable state law as to the devolution of property at death should govern the distribution of the remainder and the ultimate impact of the federal tax."

Again, this Court said that, pursuant to Section 826 (b), and quoting therefrom, it is "the purpose and intent of this subchapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be *paid out of the estate before its distribution.*"

And, commenting upon this quoted provision of Section 826 (b), this Court said:

"Section 826 (b) does not command that the tax is a non-transferable charge *on the residuary estate;* to read the phrase 'the tax shall be paid out of the estate' as meaning 'the tax shall be paid out of the *residuary* estate' is to distort the plain language of the section and to create *an obvious fallacy.* For in some estates *there may be no residue* or else *one too small* to satisfy the tax."

This Court then says that, in such event, "resort must then be had to state law to determine whether personalty

or realty, or general, demonstrative or special legacies abate first," since all the Courts hold, that the entire Federal estate tax must be paid out of the corpus of the estate.

The foregoing is the exact situation in the case at bar, under the settled law of Illinois, holding that the Federal estate tax is payable out of the general or gross estate *as an expense of administration*, and, therefore, manifestly is not payable out of the residue or proportionately by the distributees or beneficiaries of the estate, as provided for in Section 124 of the New York Decedent Estate Law, under consideration in the *del Drago* case. There is no statute in Illinois similar to Section 124.

In harmony with this Court's statement in the *del Drago* case, that the contention that the tax is payable out of the residuary estate is *"an obvious fallacy,"* the Supreme Court of Wisconsin in *In re Bradley's Will* (*supra*, p. 15), said: "It is *a solecism* to speak of discharging a debt or other charge *out of the residue*, or by application of any particular share of the residue."

The same in legal effect are the holdings in the cases previously cited in our brief (pp. 14 to 16, 19 and 20).

It Is Respondents' Position That the Language of Section 807 Is So Clear and Unambiguous as to Preclude Resort to Legislative History.

Petitioner urges that the legislative history he refers to in his brief (namely, the House and Senate Reports, Appendix B, pages 21, 22, 23 of the brief) shows that Congress intended, by the enactment of Section 807, to overcome the decision of *Edwards* v. *Slocum*, and to render that decision inapplicable in the future, in situations presented in the case at bar.

In fact, it is manifest that Petitioner's real and ultimate contention is based upon the so-called legislative history

of Section 807, and not on the plain and unambiguous language of that section.

The record and opinion of the Circuit Court of Appeals show that Petitioner in the District Court and in his brief in the Circuit Court of Appeals, admitted, to all intents and purposes, that Section 807 is not ambiguous.

As the Circuit Court of Appeals says, counsel for Petitioner in the District Court said (Rec. 201):

> "*The Government does not at all contend that this statute (Sec. 807) is ambiguous.* We simply want it clear that if the Court finds it ambiguous, the Court may examine anything it desires."

Neither the District Court, nor the Circuit Court of Appeals, found Section 807 ambiguous, but, on the contrary, found it unambiguous, and held that, under this section, pursuant to the laws of Illinois, "the law of the jurisdiction under which the estate is administered", the Federal estate tax *is not payable* out of the bequests to charity, whether residuary or specific, but is specifically *payable out of the gross* or *general estate.*

Furthermore, the Circuit Court of Appeals specifically found that petitioner conceded, in both the District Court and the Circuit Court of Appeals, that under the law of Illinois, the Federal estate tax is a paramount charge and expense of administration against the estate.

And, continuing, the Court of Appeals said that Petitioner "*seeks to parry* the force of the clear language of the section *by resort to legislative history*, in order to arrive at what he claims to be the true policy and intent of Congress."

As the Circuit Court of Appeals said:

> "It is conceded that prior to the enactment of mandatory Section 807 of the Act of 1932, there was no federal enactment which authorized the deduction of a federal estate tax from residuary bequests to charities

in fixing the net taxable estate. *Edwards* v. *Slocum*, 264 U. S. 61." (Rec. 219.)

And, immediately continuing, the Court said:

"Appellant concedes that the facts in that case (*Edwards* v. *Slocum*) are substantially identical with those here, except as to the amounts involved, and were it not for Section 807, the decision of the Supreme Court in *Edwards* v. *Slocum*, *supra*, would be controlling here."

Since the inception of our judicial system, it has been uniformly held that where the Congress has enacted a statute, the language of which is clear and unambiguous, the Congress will be presumed to have intended to say what it did say, and that it is entirely improper to resort to the legislative history of the statute or to committee reports or debates to show any different intent. *Hamilton* v. *Rathbone*, 175 U. S. 414, *Thompson* v. *U. S.*, 246 U. S. 547, 551. This salutary rule is peculiarly applicable where, as here, a tax statute is involved. *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 560. It is not, of course, the function of the courts to legislate, and we are confident that this Court will not wish to do so. *The court cannot enact a law under the pretense of construing one.* *Heiner* v. *Donnan*, 285 U. S. 312, 331. It seems hardly necessary to point out that if this court were to disregard the plain and unambiguous language of Section 807 of the Revenue Act of 1932, it would be usurping what is properly a function of the Congress. If the Congress intended to do what the petitioner now asserts that it did do, appropriate language was readily available to that end, as the Circuit Court of Appeals said in the case at bar.

In *United States* v. *Goldenberg*, 168 U. S. 95, 102, the Supreme Court of the United States, in an unanimous opinion, speaking through Mr. Justice Brewer, said:

"The primary and general rule of statutory con-

struction is that *the intent of the lawmaker is to be found in the language that he has used.* He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. *No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute.* In the case at bar the omission to make specific provision for the time of payment does not offend the moral sense. *Holy Trinity Church* v. *U. S.*, 143 U. S. 457, 12 Sup. Ct. 511. It involves no injustice, oppression, or absurdity."

It is fundamental that legislative intent must be determined from the language employed. If the language employed be plain and unmistakable, then the intent it reflects controls, whatever the legislative intent may have been outside of the enactment. It is the function of the legislature to translate its intent into its enactments. If it has failed so to do, then whatever the legislative intent may have been, it is nugatory, and cannot operate to change or modify the plain language of its enactment.

It would have been a simple matter for the Congress to have enacted a statute which would have operated to limit deductions where the decedent has bequeathed the residue of his estate to charity and where under the laws of the state of decedent's residence Federal estate taxes are paid out of the general estate of the decedent as an expense of administration and not out of decedent's residuary estate. *This the Congress did not do.*

There are only two sources from which the Federal estate tax can be made payable, either by the will or by the

law of the jurisdiction of administration; one is out of the total or gross estate; the other is out of other general bequests, including bequests to charities, either specific or residuary. Section 807 by its plain and direct terms extends only to the one alternative, namely, where by the will or by the law of jurisdiction of administration, the tax is payable out of bequests to charities, either specific or residuary, and it is only to this alternative that Section 807 can, we submit, be held to apply, as was pointed out by the Circuit Court of Appeals in the case at bar. If Congress had in mind also the other alternative, the Act would have been made to read, that, if by the will, or by the law of the jurisdiction of administration the Federal estate tax is payable either out of the general or gross estate or out of the bequests to charities, either specific or residuary, then the reduction in the amount of the exemption should be made.

Appropriate language to this end and to reach both alternatives was readily available to it, which, however, it did not employ.

We see no escape from this conclusion. It brings into play the old maxim: "*Expressio unius est exclusio alterius.*"

Despite the unwillingness of Congress to enact a statute which could have accomplished the result contended for by petitioner, the petitioner now asks this Court to ignore the clear and unmistakable language of Section 807 of the Revenue Act of 1932 and to construe that section so as to deprive charitable organizations for whom the Congress and the courts have always, and properly so, entertained the utmost solicitude, of their just measure of the testator's bounty. We cannot believe that this Court will indulge the petitioner in this wholly untenable position.

A literal reading of Section 807 as contended for by respondents does not produce an absurd result.

There is no merit in the contention of the petitioner that if Section 807 were to be given a literal reading by this court an absurd result would ensue in the instant case.

The principles which should guide courts in the construction of taxing statutes are clearly and succinctly stated in the unanimous opinion of this Court in *Crooks* v. *Harrelson*, 282 U. S. 55, where the Court was called upon to construe Section 402 of the Federal Estate Tax Act of 1918. In discussing the problem presented, the Court speaking through Mr. Justice Sutherland said (pp. 59-61):

> "It is urged, however, that, if the literal meaning of the statute be as indicated above, that meaning should be rejected as leading to absurd results, and a construction adopted in harmony with what is thought to be the spirit and purpose of the act in order to give effect to the intent of Congress. The principle sought to be applied is that followed by this court in *Holy Trinity Church* v. *United States*, 143 U. S. 457, 12 S. Ct. 511, 36 L. Ed. 226; but a consideration of what is there said will disclose that the principle is to be applied to override the literal terms of a statute only under rare and exceptional circumstances. *The illustrative cases cited in the opinion demonstrate that, to justify a departure from the letter of the law upon that ground, the absurdity must be so gross as to shock the general moral or common sense.* • • •
>
> "Courts have sometimes exercised a high degree of ingenuity in the effort to find justification for wrenching from the words of a statute a meaning which literally they did not bear in order to escape consequences thought to be absurd or to entail great hardship. But an application of the principle so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call rather for great caution and circumspection in order to avoid usurpation of the latter. *Monson* v.

Chester, 22 Pick. (Mass.) 385, 387. It is not enough merely that hard and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation. Laws enacted with good intention, when put to the test, frequently, and to the surprise of the lawmaker himself, turn out to be mischievous, absurd, or otherwise objectionable. *But in such case the remedy lies with the lawmaking authority, and not with the courts.* • • •

"Finally, the fact must not be overlooked that we are here concerned with a taxing act, with regard to which the general rule requiring adherence to the letter applies with peculiar strictness."

Moreover, a literal reading of Section 807 does *not* lead to absurd results. Quite the contrary, Section 807 has a perfectly proper scope and its expressed terms so indicate. Section 807 refers not only to Federal estate taxes, but to all kinds of succession, legacy and inheritance taxes imposed by the various states. In many jurisdictions these taxes are paid by the various beneficiaries under the decedent's will out of their respective bequests. Testators often believe that each legatee should bear a proportion of all taxes imposed upon the estate and consequently, in many wills provisions are incorporated to this effect. In such cases it is obvious that Federal estate taxes would be payable out of amounts bequeathed. In some jurisdictions, the residuary legatees take the decedent's residuary estate subject to the payment of all taxes, claims and expenses of administration. In those jurisdictions a residuary bequest is therefore equivalent to a specific bequest. It is conceded by the petitioner that Section 807 is entirely unambiguous in regard to specific bequests. These are all instances in which Section 807 might have a proper scope and where its application would not lead to absurd results.

Petitioner says (Br. 10):

"Thus, under the prior law as interpreted by *Ed-*

> *wards* v. *Slocum*, the testator was provided with a facile means of estate tax avoidance. He could carve up his estate in such manner as to leave a residue roughly equal to the anticipated tax and then make the meaningless bequest of the residue to charity. The charity, of course, would receive nothing, but the estate would obtain the windfall of a substantial charitable deduction. Section 807 was enacted to prevent such avoidance in the future."

The statement that Section 807 was enacted to prevent such avoidance begs the whole question in this case. The question is whether Section 807, in the light of its plain and unambiguous language, manifests this purpose and intention. We have endeavored to show that Section 807 manifests no such intention and is not susceptible of such construction, but, on the contrary, is limited in its application to the single instance in which, either under the Will or the law of the local jurisdiction, the tax is *payable out of* the charitable bequests, whether specific or residual. This, we have shown, has no application to the instant case. This is simply another effort, in different form, to read the alleged legislative history into Section 807, contrary to its explicit and limited terms.

The Circuit Court of Appeals in the case at bar specifically held that "a literal reading of Section 807 does not produce an absurd result". Citing *Commissioner* v. *Ames*, 88 Fed. (2d) 338 (C. C. A. 7th).

The Circuit Court of Appeals of the 7th Circuit and other courts have found no absurdity whatsoever in a precisely parallel situation.

Thus, in the Ames case, *supra*, where the decedent's estate consisted solely of insurance payable to named beneficiaries, which is subject to Federal estate tax in excess of $40,000, the court in determining the amount of the Federal estate tax allowed deductions for claims against

the estate, although it is perfectly obvious that since the insurance is payable to named beneficiaries it is not subject to the claims of creditors, *and that their claims will never in fact be paid.* Section 303(a)(1) of the Revenue Act of 1926, as amended (now Section 812 (b) of the Internal Revenue Code) provides:

> "For the purpose of the tax the value of the net estate shall be determined * * * by deducting from the value of the gross estate—such amounts * * * *for claims against the estate* * * * *as are allowed by the laws of the jurisdiction* * * * *under which the estate is being administered* * * *."

In construing this section, and in holding that it must be given effect in accordance with its literal terms the Court said (p. 339):

> "The Commissioner contends that the gross estate here involved being one that is not burdened with the debts of the deceased, no reason appears for offsetting such claims before reaching a net estate on which to compute tax. He assumes that the tax is a succession excise and reasons therefrom that the property which does not pass (that part used for debts, etc.) having been relieved from such tax, it would be wholly absurd to construe the statute in the manner contended for by respondent, as such construction would tend to defeat its very purpose. His reasoning is not without merit, but we think the answer lies in the statute itself. *The matter of deductions is wholly within the power of the legislative department, and when Congress has specified in such plain language as above indicated what sums are to be deducted from the gross estate, little is left for the courts by way of construction. We think the language plain and unambiguous, and it is not within our province to say whether founded on reason or not.*
>
> *"When Congress said that in fixing the net estate 'claims against the estate' were to be deducted, if they had wished to make an exception and limit such deductions by excluding such portions of the estate as*

passed unburdened of claims under the law of the state of domicile, it would have required only the simplest kind of language to have done so. They may not have had in mind a fact situation such as is here present, and they may have wished that the applicable deductions be not applied to such an estate as the one under consideration, but for us to so assume would be pure speculation.

"Petitioner further asserts that the language 'shall be determined' is merely directory and that other sections of the act evidence the intention of Congress to provide such deductions as here involved only if the gross estate is chargeable with such claims. We find nothing in the act itself evidencing a legislative intention contrary to that of the plain language of section 303, (a) (1), *supra*. Beyond this we are not permitted to go. *U. S.* v. *Goldenberg*, 168 U. S. 95, 18 S. Ct. 3, 42 L. Ed. 394."

To the same effect is *Commissioner of Internal Revenue* v. *Strauss*, 77 Fed. (2d) 401, 405 (C. C. A. 7).

The conclusion reached by the Circuit Court of Appeals, that there is nothing absurd in permitting deductions for claims that will never be paid, is supported by decisions of the Circuit Courts of Appeal for the First, Second, Fifth and Eighth Circuits.

In *Commissioner of Internal Revenue* v. *Windrow*, 89 Fed. (2d) 69 (C. C. A. 5), the court said (p. 71):

"By the express terms of the statute laying it, the tax in question here is upon the transfer of a net estate ascertained as the act prescribes by taking the deductions allowed, from the statutory gross estate, and not on every value or property that may be transferred by death. If there is no net estate as the statute defines it, there is no tax. The nature of the tax is stated, and the statute literally applied touching a deduction for a charitable bequest in *Edwards* v. *Slocum*, 264 U. S. 61, 44 S. Ct. 293, 68 L. Ed. 564. Every other deduction ought to have the full allowance that the statute provides. *Courts and administrative agencies*

> *are bound to enforce the plain words of the statute, although there may be reason to think, in view of the general legislative purpose that some other provision would have met with favor if the Legislature had called it to mind.* We cannot, if we would, amend the statute to read *'The value* of claims against the estate,' or 'Claims against the estate *so far as paid.'* Congress did limit claims in respect of their allowance in law; it did not limit them in respect of their payment or payability."

If the court may not by construction change the phrase "*such amounts as are allowed by the laws* of the jurisdiction under which the estate is being administered" to "*the value* of claims against the estate" or "claims against the estate *so far as paid*" certainly the Court may not by construction change the words "*payable in whole or in part out of the bequests*" to "payments which *reduce* the bequests." To the same effect are *Helvering* v. *O'Donnell*, 94 Fed. (2d) 852, 854 (C. C. A. 2), and *Helvering* v. *Northwestern Nat. Bank & Trust Co. of Minneapolis*, 89 Fed. (2d) 553, 556 (C. C. A. 8).

It follows inexorably from the foregoing that Congress in allowing deductions in the computation of Federal estate taxes is not concerned with what finally happens to the decedent's estate. *Surely, if there be nothing absurd in allowing deductions for claims which will never be paid, there likewise can be nothing absurd in permitting charitable deductions in an amount that charities may not ultimately receive from the estate of the decedent.*

Whatever may be said about the legislative history of Section 807, its words neither directly nor indirectly provide that the Federal estate tax must be added to the otherwise net taxable estate of the decedent before computing the amount of the residue bequeathed to charities.

Every intendment is in favor of respondents' construction of Section 807 of the Revenue Act of 1932 and against the petitioner's construction of said Section because (a) the petitioner's construction, by ignoring the express words of the statute, would secure a larger Federal estate tax, (b) the petitioner's construction diminishes the bequests which the residuary charitable legatees, in whose favor taxing statutes are always liberally construed, would otherwise receive from the decedent's estate, (c) the petitioner's construction would result in the imposition of a tax upon a tax which would have to be computed by means of an algebraic or complicated arithmetical formula, neither of which is favored by the courts.

In support of the many cogent reasons why the construction of Section 807, urged by the respondents should be adopted by this Court, we wish to call attention to certain well established applicable rules of interpretation and construction.

(a) *It is a universal rule that tax-imposing statutes are to be construed strictly against the taxing power and in favor of the taxpayer.*

This is so fundamental that no extended citations of the authorities can be necessary.

And in 61 C. J. 1626, it is said:

> "*Where there is a doubt* as to the construction of a statute imposing an inheritance or transfer tax, it should be resolved in favor of the person taxed, and the statute construed strictly against the taxing power. *A doubt as to the taxability of a fund should be resolved against the Government.*"

In *Converse* v. *Northern Pac. Ry. Co.*, 2 Fed. (2d) 959, (C. C. A. 8), it was said (p. 960):

> "* * * if the Legislature intends to tax him, it

shall at least be required to say so, *in clear and unmistakable terms.*"

To the same effect are:

Gould v. *Gould*, 245 U. S. 151, 153; and

United States v. *Merriam*, 263 U. S. 179, 187, 188.

(b) *The law exempting charitable bequests should be liberally construed to favor and encourage the same.*

Harrison v. *Barker Annuity Fund*, 90 Fed. (2d) 286, 288.

United States v. *Pleasants*, 305 U. S. 357.

United States v. *Proprietors of Social Law Library*, 102 Fed. (2d) 481, 482 (C. C. A. 1).

Union & New Haven Trust Co. v. *Eaton*, 20 Fed. (2d) 419, 421 (D. C., Conn.).

(c) *Construction is against double taxation.*

In *State of Tennessee* v. *Whitworth*, 117 U. S. 129, 137, it was said:

"Double taxation is, however, never to be presumed. * * * All presumptions are against such an imposition."

(d) *For greater reason, construction is against a tax upon a tax.*

Thus, in *Edwards* v. *Slocum*, 264 U. S. 61, 63, the Court said:

"The (government's) theory departs from the long established practice of the law not to regard the incidence of a tax in the levying of a tax."

In the same case, in 287 Fed. 651, 655 (C. C. A. 2), it was said:

"History, so far as we can discover, shows no other instance of attempting to measure a tax *pro tanto* by itself. As Hand, J., said in the court below, this theory

departs from long established practice, and from the usage, if not the law, of never regarding the incidence of a tax in the levying of a tax."

To the same effect are the following cases:

Clark v. *United States*, 27 Fed. (2d) 887, 888 (D. C., Mass.);

Old Colony Trust Co. v. *Malley*, 15 Fed. (2d) 105, 106 (D. C., Mass.); and

Nichols v. *Leach*, 50 Fed. (2d) 787, 792 (C. C. A. 1).

In the light of the foregoing fundamental principles of statutory construction to which the courts have always adhered, we cannot conceive that this Court will adopt the construction of Section 807 urged by petitioner.

It is evident that if Section 807 be read, and its words be given their usual and ordinary meaning, the section can have no application to this estate. The sole purpose of the petitioner in seeking to obtain judicial approval for his construction of Section 807 is to impose a larger Federal estate tax upon Mr. Wolf's net estate. The only result of this construction would be to greatly diminish the shares of the residuary charitable legatees and to transfer that amount to the Treasury of the United States. If, to all of this, we add the further considerations that the Commissioner's construction (a) results in the imposition of a tax upon a tax (which, being utterly unsound, has never been approved and has been often condemned by the courts) and (b) in order to compute the tax upon a tax where there is a residuary gift to charities and the amount of the charitable deductions and the amount of the tax are necessarily unknown, resort must be had to an algebraic or complicated arithmetical formula in the computation of the tax, it becomes an indisputable fact, we submit, that every intendment is against that construction.

It seems impossible to reconcile the Commissioner's construction of Section 807 with the express declaration of

the courts that statutes furthering the encouragement of bequests for purposes which tend toward the public good are to *be liberally construed,* and that in such cases *exemption from taxation is not so much a matter of grace or favor as rather an act of public justice. Harrison* v. *Barker Annuity Fund,* 90 Fed. (2d) 286, 288 (C. C. A. 7). In this view, there is no valid or logical reason for this Court to adopt the construction urged by the petitioner.

Section 807 of the Revenue Act of 1932, If Construed as Petitioner Contends, Would Be Unconstitutional Because It Would Require (a) That the Incidence of the Tax Must Be Regarded in the Levying of the Tax, and (b) That the Amount of the Tax Be Measured by the Tax Itself, or in Other Words That a Tax Be Imposed Upon a Tax.

Respondents in their Complaint alleged that Section 807 of the Revenue Act of 1932, if and as applied by the Commissioner in determining the estate tax liability of this estate, is unconstitutional and void, and denies to respondents the due process guaranteed by the Fifth Amendment to the Constitution of the United States (Rec. 6). This allegation was denied by the petitioner in his Answer (Rec. 39). The constitutionality of Section 807 is therefore in issue in this case although the courts below, having found that Section 807 did not apply in the computation of Federal estate taxes on Mr. Wolf's estate, had no occasion to decide and did not decide whether Section 807 was or was not constitutional when applied to this estate.

Petitioner says (Br. 16):

> "But whatever may be said of the accuracy of respondents characterization of Section 807, it is clear that this case simply involves a charitable deduction which Congress could have denied altogether."

We do not dispute that it is within the power of the Congress to determine what are proper deductions in

the computation of taxes, or that it would be competent for Congress to limit deductions or to deny them altogether. We *do* insist, however, that where the intention of the Congress to permit deductions for bequests to charity has been clearly expressed in successive revenue acts, *the right to such deductions can only be abridged or limited by language as clear and unmistakable as the language originally granting such deductions*, and can not be limited or abridged by a construction of a statute which is contrary to accepted fundamental principles of taxation.

Viewed in this respect, Section 807 of the Revenue Act of 1932 is unconstitutional when applied to the residuary estate of a decedent bequeathed to charity for the following reasons: Federal estate taxes are determined by ascertaining the net estate of the decedent and applying the statutory rates of tax thereto. The net estate of the decedent is the amount transferred by reason of his death, less all proper credits and deductions. It follows that if Section 807 be given the construction which the Commissioner seeks to place upon it, the respondents, in computing the tax upon the estate of their decedent, would be required to ascertain the amount of the deductions on account of their decedent's residuary bequests to charity. Following the Commissioner's theory, the amount of such deductions would then have to be reduced by the ultimate amount of the Federal estate tax which the respondents are required to pay, which is, of course, unknown. Quite aside from the difficulties of computation where there are two mutually dependent, indeterminate amounts, (that is, the amount of the charitable deductions and the amount of the tax) it is clear that the effect of Section 807 is to add the amount of the tax to the otherwise taxable net estate and thereby to create a fictitious net estate, and to impose a tax upon the amount of the tax itself. If it be the intent of the Congress to limit or abridge charitable deductions, and the Congress,

in endeavoring to effect that intent, enacts a statute which imposes a tax upon a fictitious net estate by adding the amount of that tax to the otherwise taxable net estate, then we say that statute is unconstitutional.

We realize that Section 807 of the Revenue Act of 1932 has not heretofore been judicially construed except by the District Court and the Circuit Court of Appeals in the case at bar. Nevertheless the question of the right of the Congress to impose a tax upon a tax has been before the courts. This Court has said that it will settle this question whenever an attempt to impose a tax upon a tax is undertaken by the Treasury and the question is properly presented to the court.

> *Old Colony Trust Co.* v. *Commissioner*, 279 U. S. 716, 730, 731.

In its consideration of this question, we again call the Court's attention to the opinion of Judge Hough sitting in the Circuit Court of Appeals for the Second Circuit in *Edwards* v. *Slocum*, 287 Fed. 651. In discussing the Government's contentions, Judge Hough said, at page 653:

> "It is urged insistently that, since the residuary charities will not get what the United States takes, and would get that much more if the United States took nothing, what they do not get must be taxable, and, since that which is taxable or measures tax is called 'net estate' by the statute, there it must go. Assuming this as truth, the tax layer perceives that the 'net estate,' which is practically synonymous with taxable estate, is to receive augmentation by an unknown amount, which renders its own figure unknown;"

Continuing his analysis, Judge Hough said, at pages 654 and 655:

> "It is next observable that this using of tax to measure tax will only happen when the residuary estate, or some part of it, is devoted to charity or other deductible purpose. If this testatrix had made

ber charitable bequests before inserting a residuary clause, no difficulty would have arisen. It is argued with apparent seriousness that this is 'something for which the testatrix is responsible,' which is true only if the law laid such a trap as this for charitable residuary legatees, as distinguished from equally charitable general legatees—again something not lightly imputable to the lawgiver. • • •

"The net estate resulting from the legal invention of using a tax to measure a tax does not respond to that concept; it is but a fiction, never to be found, except in a tax sheet. This is artificial, not real, and is to be avoided, if at all possible.

"Again, observing the language of the statute, it may be admitted that net estate is used but as a measure for tax, and is not itself taxed, for the impost is said to fall upon the entire property. This is mere matter of words; for practical purposes the net estate is the taxable estate. It is therefore a fundamental objection, not only as to the spirit but the letter of this act, *that the taxable estate is augmented by a deliberate and designed encroachment upon charities.*

"• • • History, so far as we can discover, shows no other instance of attempting to measure a tax *pro tanto* by itself. As Hand, J., said in the court below, this theory departs from long established practice, and from the usage, if not the law, of never regarding the incidence of a tax in the levying of a tax."

Judge Hough concludes with the observation that the scheme of taxation insisted on by the Government is unjust, opposed to long established practice and the spirit of the statute, and that it is not required by the language of the Act and tends only to bring confusion into the administration of the tax laws.

When the *Slocum* case ultimately reached this Court, the unanimous opinion of the Court affirming the decision of the Circuit Court of Appeals for the Second Circuit was delivered by Mr. Justice Holmes (264 U. S. 61). In this opinion, Mr. Justice Holmes first points out that the Federal estate tax is not a tax upon a

residue but is a tax *upon a transfer of his net estate by a decedent* and that the tax comes into existence before and is independent of the receipt of the property by the legatee. Continuing, Mr. Justice Holmes comes to the logical conclusion that *the net estate will be ascertained before the tax is computed.* Concluding he says, (p. 63):

> "As further remarked below the theory departs from the long established practice of the law not to regard the incidence of a tax in the levying of a tax *and the position of the Government is contrary to the expressed intent of the statute to encourage charitable bequests.*"

We submit that the principles enunciated both by Mr. Justice Holmes and by Judge Hough are as fundamentally sound today as they were when first promulgated, and that if Congress by its enactment of Section 807 has intended to abrogate those principles, then such act is unconstitutional. Much of what was said by Judge Hough and Mr. Justice Holmes in the *Slocum* case is equally pertinent to our discussion, *infra* pp. 36-38, of the Commissioner's computation of the tax.

It seems plain beyond peradventure that when applied to the residuary estate bequeathed to charities by an Illinois decedent, the application of Section 807 results in the imposition of a tax by a deliberate encroachment upon the rights of the residuary charitable legatees.*

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* It will be noted that in discussing the right to impose a tax upon a tax the courts also discuss the right to employ an algebraic formula in the computation of the tax. It would seem that a system of taxation which requires the use of an algebraic or complicated arithmetical formula to compute the tax may be an additional reason why a statute imposing a tax upon a tax would be unconstitutional.

If Section 807 of the Revenue Act of 1932 Is Held to Apply to This Estate and to Be Constitutional, the Commissioner of Internal Revenue Is Not Entitled to Use an Algebraic or Complicated Arithmetical Formula to Compute the Amount of the Federal Estate Taxes on This Estate.

It is alleged in the respondents' Complaint (Rec. 4) and in their reply (Rec. 43) that the Commissioner calculated the amount of Federal estate tax on this estate by algebraic formula.

Respondents' Computation.*

Respondents maintain that the Federal estate tax on Mr. Wolf's estate is $342,744.60. This tax is computed exactly as in *Edwards* v. *Slocum*, as follows (Rec. 80-81):

Gross estate			$4,238,805.97
Deductions:			
(1) Debts, etc.	$ 283,810.44		
(2) Charitable, etc. legacies other than residual	1,570,696.74		
(3) Residuary for charity, etc.	463,103.08		
(4) Specific exemption under 1926 Act	100,000.00	2,417,610.26	
Net estate 1926 Act			$1,821,195.71
Gross estate			$4,238,805.97
Deductions:			
(1) Debts, etc.	$ 283,810.44		
(2) Charitable, etc. legacies other than residual	1,570,696.74		
(3) Residuary for charity etc.	463,103.08		
(4) Specific exemption under 1932 Act	50,000.00	2,367,610.26	
Net estate 1932 Act			$1,871,195.71
Federal Estate Tax on net taxable estate under 1926 and 1932 Acts as above			$ 342,744.60

* In the Federal estate tax return which the respondents filed for the estate of their decedent, respondents reported a tax of $436,744.65 (Rec. 196). This amount was paid by the respondents under protest to avoid having to pay interest on any deficiency. See testimony of Mary E. Kaufman (Rec. 113, 114).

In the *Slocum* case, the Executors, in their Federal estate tax return, reported as follows (287 Fed. 652):

Gross estate			$49,129,256.99
Deductions:			
(1)	Debts, etc.	$ 3,789,321.74	
(2)	Charitable, etc. legacies other than residual	1,285,000.00	
(3)	Residuary for charity, etc.	35,436,855.70	
(4)	Specific exemptions	50,000.00	40,561,177.44
	Net Estate		$ 8,568,079.55

and paid a Federal estate tax of $1,406,977.50 on the $8,568,079.55.

The above shows that what was offered for tax, that is, the "net estate," is exactly the aggregate of pecuniary bequests to other than charitable, etc. purposes, less the specific statutory exemption. Proper tax on this net figure was admitted to be $1,406,977.50. To this the Commissioner objected and restated the return by adopting all the Executors' figures except those for the "residuary for charity, etc." which he reduced from $35,436,855.70 to $33,610,506.75, thereby increasing the net estate by the amount of the reduction and, on investigation, this difference is found to be $1,826,348.95, which is the amount of the Federal estate tax on the net estate increased by the amount by which the Commissioner reduced the residuary charitable deductions.

This result, as Judge Hough said in the *Slocum* case (287 Fed. 652) "plainly involves paying an estate tax on the amount of the tax paid" which, as we have shown has been condemned both by the Circuit Court of Appeals for the Second Circuit and this Court (*supra*, pp. 38-40).

The Commissioner in the instant case reduces the

exemption for the residuary bequest to charities of $463,103.08 to $3,223.51 and adds the difference of $459,879.57 to the net estates.* The Federal estate tax on this augmented amount, when computed according to the Commissioner's method, is $459,879.57 (Rec. 74-78), which is exactly the amount by which the Commissioner has reduced the residuary charitable deductions claimed by respondents. The respondents computed Federal estate taxes on their decedent's estate precisely in the same manner as Federal estate taxes were computed in the *Slocum* case, which case respondents insist is controlling in the computation of Federal estate taxes on the estate of an Illinois decedent, and the Commissioner has done in the instant case exactly what he attempted to do in the *Slocum* case.

Commissioner's Computation.

The discrepancy between the respondents' computation and the Commissioner's computation arises because the Commissioner has added to the otherwise net taxable estate of the decedent the amount of the Federal estate tax as computed by him, and has then recomputed the tax upon the otherwise taxable net estate augmented by the amount of the tax.

It is apparent that the Commissioner in computing the tax in the amount of $459,879.57 on the basis of allowing as deductions for residuary bequests to charitable organizations only the sum of $3,223.51 was compelled to ascertain the amount of the allowable charitable deductions in order to compute the correct Federal estate tax, and simultaneously was required to determine the correct Federal estate tax in order to ascertain the allowable charitable deductions. This problem involving two indeterminate unknown factors mutually dependent can be solved by the

*The computation in Edwards vs. Slocum was made under the Revenue Act of 1918. The tax in the case at bar must be computed under both the Revenue Act of 1926 and the Revenue Act of 1932.

application of the principles of algebra, but petitioner, while insisting that the Commissioner has the right to compute Federal estate taxes by means of algebra, denies that the tax was so computed in the instant case. The reason for this denial is obvious. Even the Commissioner must realize what this Court had in mind when it said in the Slocum case, that "algebraic formulae are not lightly to be imputed to legislators."

There is nothing in the Constitutions of the United States, or any of the States or in the structure of the successive Revenue Acts which would justify the imposition of taxes by resort to the principles of algebra.

The fact of the matter is that the tax can only accurately be computed by means of an algebraic or complicated arithmetical formula and cannot be computed through any simple principles of arithmetic. No one is better aware of this than the Commissioner. There is no magic in the term "algebra." What we are here protesting is any computation which is so involved as to be beyond the comprehension of the ordinary taxpayer.

The tax might be approximated by trial and error, the number of trials depending upon where the person figuring the tax happens to start, but no one has ever contended that it would be proper or permissible to compute Federal estate taxes by trial and error.

The Commissioner's computations speak for themselves. We can only suggest that the Court read them Attempts to explain the Commissioner's computations only emphasize their complexity.

Be that as it may, Professor Graves testified on behalf of the respondents and it is not contradicted, that it is impossible to understand the Commissioner's computation without an understanding and knowledge of the principles of algebra. (Rec. 108-111.)

In order to analyze and discuss the Commissioner's com-

putation, it is necessary to adopt the terms *"true tax"* and *"trial tax"* used by the Commissioner and the petitioner. These terms, which have been coined by the Commissioner, are without meaning when applied to a tax statute unless the Commissioner is to be permitted to write his own dictionary.

There is no reference either in the statutes imposing a Federal estate tax or in the applicable regulations to such terms as *"trial tax"* and *"true tax."* Taxing statutes impose *"taxes"* and that is the only thing that properly concerns us.

It is quite true that once the trial tax has been computed by application of the principles of algebra, the determination of the true tax may be accomplished arithmetically by the application of the principles of percentage. It is not, however, possible to ascertain the trial tax as found by the Commissioner in the amount of $340,310.88 without the use of an algebraic formula, nor is it possible for the taxpayer to understand why the Commissioner's formula of $1-1\mid(.34-[.8\times.10])$ applied to the figure of $340,310.88 will produce the true tax, without an understanding of the principles of algebra.

We again emphasize that the Federal estate tax is imposed upon the *net estate* of the decedent. The net estate of this decedent under the 1926 Act is $1,821,195.71 and under the 1932 Act, $1,871,195.71. These amounts, however, are designated by the Commissioner in his computation as the *"trial net estates."* The Commissioner ascertains the trial tax by adding to the "trial net estates" an amount which is assumed to be the tax on the trial net estates, and then applies to this augmented amount the rates not on this net estate, but on an assumed net estate, which is in a higher bracket.

In his computation, the Commissioner has overstated the tax by applying a rate of 10 per cent under the 1926

Act and a rate of 34 per cent under the 1932 Act, such rates being applicable to net estates of more than two million dollars, when it is perfectly clear that unless the Federal estate tax ultimately to be paid is added to Mr. Wolf's net estate, his net estate does not exceed two million dollars, and the applicable rates are 9 per cent under the 1926 Act and 31 per cent under the 1932 Act. The Commissioner's computation involves the application of algebraic principles, but is without warrant in the computation of Federal estate taxes on this estate.

This Court, we submit, should put an end once and for all to the assessment of Federal estate taxes by complicated algebraic and arithmetical formulae, by *"trial taxes"* and *"true taxes."*

Conclusion.

The language of Section 807 is clear and unambiguous. It is applicable only in cases where Federal estate taxes are payable *out of* charitable bequests. Under the law of Illinois, Federal estate taxes are payable out of the general or gross estate of the decedent as an expense of administration and are not payable out of the decedent's residuary estate bequeathed to charity. The instant case, therefore, manifestly does not fall within the express words of the statute.

The judgment of the District Court and the Circuit Court of Appeals is correct and should, therefore, be affirmed.

Respectfully submitted,

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HARRY B. HURD,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 103.—October Term, 1942.

Carter M. Harrison, Individually and as Collector of Internal Revenue, First Collection District of Illinois, Petitioner,

vs.

The Northern Trust Company and Mary E. Kaufman, Executors under the Last Will and Testament of Henry M. Wolf, Deceased.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[January 11, 1943.]

Mr. Justice Murphy delivered the opinion of the Court.

Respondents, the executors under the will of Henry M. Wolf, brought this action to recover an alleged overpayment of federal estate taxes. The case turns upon whether under the provisions of § 303(a) of the Revenue Act of 1926, as amended by § 807 of the Revenue Act of 1932,[1] the amount to be deducted from decedent's gross estate on account of the bequest of his residuary estate to charity is the actual amount of such bequest, after payment of federal estate taxes, or what would have been the amount if there had been no such taxes.

Testator, a resident of Illinois, bequeathed the residue of his estate to four named charitable organizations. The will contained no provision as to the payment of federal or state death taxes except for a direction that all inheritance, legacy, succession and estate taxes upon certain specific bequests to individuals

[1] Section 807 provides as follows:

Sections 303(a)(3) and 303(b)(3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:

"If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

It is now part of § 812(d) of the Internal Revenue Code.

should be paid out of the general estate. The residuary estate, after deducting funeral and administration expenses and specific bequests but not the federal estate tax, amounted to $463,103.08, all of which sum respondents claim they are entitled to deduct from the statutory gross estate in computing the federal estate tax. The Commissioner of Internal Revenue ruled, however, that only that portion of the residue which was actually distributable to the charitable donees, i. e., the amount remaining after payment of the federal estate tax, was deductible as a charitable bequest. He determined that the total estate tax amounted to $459,879.57, which would be paid out of the residuary estate, and that respondents were therefore entitled to deduct only $3,223.51, the amount actually passing under the residuary bequests.

Respondents paid the assessed tax under protest and filed a claim for refund which the Commissioner rejected. This suit followed, and the district court entered judgment for respondents. The Circuit Court of Appeals affirmed. 125 F. 2d 893. We granted certiorari because of the importance of the question in the administration of the federal estate tax system.

Section 807 recognizes that the ultimate thrust of the federal estate tax is to be determined by state law, cf. *Riggs* v. *Del Drago*, — U. S. —, (decided November 9, 1942), and provides that where the tax is, either under the will or the applicable local law, "*payable . . . out of* the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."[2] The court below fixed upon the words "payable out of" and held § 807 inapplicable because the federal estate tax was a charge against the entire estate and not against the residue under Illinois law,[3] and therefore was not "payable out of" the residuary bequest. The court then followed *Edwards* v. *Slocum*, 264 U. S. 61, where under substantially identical facts and in the absence of a statute such as § 807, the instant issue was resolved against the Government. In so doing the court below refused to examine the legislative history of § 807 on the ground that the section was unambiguous.

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[2] Emphasis added.

[3] The cases of People v. Pasfield, 284 Ill. 450; People v. Northern Trust Co., 289 Ill. 475; and People v. McCormick, 327 Ill. 547, were cited for this proposition.

But words are inexact tools at best and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how "clear the words may appear on 'superficial examination'." *U. S.* v. *Amer. Trucking Ass'ns.*, 310 U. S. 534, 543-44. See also *United States* v. *Dickerson*, 310 U. S. 554, 562. So, accepting the Circuit Court's interpretation of Illinois law as to the incidence of the tax, we think it should have considered the legislative history of § 807 to determine in just what sense Congress used the words "payable out of". The committee reports on § 807 demonstrate that it was intended as "a legislative reversal of the decision" in *Edwards* v. *Slocum*, *supra* (H. Rep. No. 708, 72d Cong., 1st Sess., p. 50),[4] and that Congress used the words "payable out of" in the sense of "diminished or reduced by" the payment of the tax. Thus the House Report states:

"The purpose of this amendment is to limit the deduction for charitable bequests, etc., to the amount which the decedent has in fact and in law devised or bequeathed to charity. Under existing law no consideration can be given to any estate, succession, legacy, or inheritance taxes imposed with respect to a decedent's estate even though by the terms of his will or the local law they actually reduce the amount of such bequest or devise." p. 49.

And, in referring to the situation in *Edwards* v. *Slocum*, it was said:

"Under the State law the estate tax was payable generally out of the estate and so fell upon and reduced the residuary estate given to charity." p. 50.

That is the case here for while the estate tax may be a charge against the entire estate under Illinois law, admittedly its payment will operate to reduce the amount of the residuary estate. This legislative history is conclusive in favor of the Government's contention that respondents are entitled to deduct only the amount of the residuary estate actually passing to the charitable beneficiaries after provision is made for the payment of the federal estate tax.

It is argued on behalf of respondents that this interpretation of § 807 results in a "tax upon a tax" and is therefore unconstitutional. We need not stop to consider the accuracy of this

[4] See also S. Rep. No. 398, 68th Cong., 1st Sess., p. 35, and H. Conference Rep. No. 844, 68th Cong., 1st Sess., pp. 25-26, with reference to § 303(a) of the Revenue Act of 1924 which contained the same sentence as § 807.

nomenclature because this case involves only a charitable deduction which Congress could have denied altogether, and the limitations placed upon that deduction by § 807 clearly do not go beyond the limits of permissible constitutional power. Respondents also object to the fact that the tax may have to be computed by an algebraic formula or by complicated arithmetical methods because of the two mutually dependent variables, the amount of the tax and the amount of the residue as reduced by the tax, and reference is made to the statements in *Edwards* v. *Slocum* that "algebraic formulae are not lightly to be imputed to legislators", 264 U. S. at 63. This contention loses all significance when it is remembered that § 807 was intended as a "legislative reversal" of *Edwards* v. *Slocum*. And compare *United States* v. *New York*, 315 U. S. 510.

The judgment is reversed and the cause remanded for further proceedings in conformity with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.